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COMPLETED

REPORT

together with

SEPARATE VIEWS

BY THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

U.S. HOUSE OF REPRESENTATIVES

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, D.C., July 14, 1982.

To: MEMBERS, COMMITTEE ON ENERGY AND COMMERCE.

DEAR COLLEAGUE: I am forwarding a report concerning Federal agency energy conservation issued by the Subcommittee on Oversight and Investigations. The report is based upon testimony presented to the Subcommittee at a hearing on October 23, 1981, staff review of hundreds of pages of internal agency documents and audit reports, and correspondence and interviews with corporate energy managers and Federal agency officials conducted between July 1981 and April 1982.

The Subcommittee's report reveals that the Federal government is the Nation's largest consumer of energy. In Fiscal Year 1981, the government's energy bill totaled $12.5 billion, accounting for nearly two percent of the Federal budget. According to the Committee's investigation, increases in this enormous energy bill can be restrained and millions of dollars in cost savings can be achieved through the implementation of aggressive energy conservation actions and improved management practices within the Federal sector. For example, an August 1981 report of the Defense Audit Service concluded that several million dollars could be saved annually in the Defense Department alone simply by reducing water heater temperature settings in military family housing.

In view of these large potential savings, the report reviews Administration policies concerning energy conservation in Federal buildings and operations. The report discloses that the Federal government is not managing its energy use like a well-run corporation and that Federal conservation programs suffered serious setbacks in 1981. During Fiscal Year 1981, energy conservation progress in Federal buildings stalled to a complete standstill, and the Department of Defense violated its internal conservation goals for mobility fuels for the first time.

The report finds that the President and high-level officials in the Office of Management and Budget, the Department of Energy, the Department of Defense, and the Department of the Interior have begun to dismantle programs designed to curb energy use rather than providing the aggressive action necessary to combat energy waste. Throughout 1981 and early 1982, the President and top-level officials in most Federal agencies failed to make a commitment or even a comment about the need for Federal energy conservation. At the same time, several major energy-using agencies eliminated or downgraded the positions of key energy conservation officials and reduced funding for energy conservation measures.

As a result of the Subcommittee's inquiry, some agencies have initiated efforts to improve their energy conservation programs. However, the report finds that these initiatives fall short of those required to assure the implementation of an effective program to restrain Federal energy use.

The Subcommittee concludes that the American people cannot afford a "laissez-faire" approach to Federal energy management. Therefore, the report suggests measures designed to strengthen the energy management systems of individual agencies and recommends that the Administration establish a high-level office in the executive branch to improve oversight of the energy conservation programs of individual agencies.

Sincerely,

JOHN D. DINGELL,
Chairman.

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I. Introduction

Energy costs paid by Federal agencies amounted to $12.5 billion in Fiscal Year 1981, representing nearly two percent of the Federal budget.[1] Unless progress is achieved in reducing government energy use, the Federal energy bill is projected to escalate to over $20 billion by 1985.[2]

Yet, since January 1981, the Administration has begun to dismantle programs designed to curb Federal energy use rather than providing the aggressive action necessary to combat energy waste. As a result, American taxpayers already have been denied millions of dollars in energy conservation savings. Unless the Administration reverses this trend and undertakes a strong program to reduce Federal energy consumption, our Nation's energy bills will skyrocket and millions of additional tax dollars will be wasted.

II. The Federal Government: The Nation's Largest Energy Consumer

The Federal government is the Nation's largest consumer of energy, accounting for 2.4 percent of total energy use in the United States.[3] In Fiscal Year 1981, Federal agencies used 1.78 Quads of energy,[4] substantially more energy than any single corporation in the Nation.[5]

Forty-eight percent of Federal energy consumption is used in the operation of approximately 500,000 Federal buildings.[6] Equipment and vehicles, including aircraft, ships, and motor vehicles, account for the remaining fifty-two percent of energy consumed by the Federal government.[7]

Energy consumption by the Department of Defense (DOD) overshadows consumption by all other Federal agencies. DOD has an enormous appetite for energy, consuming 82 percent of the energy used in the Federal sector.[8] In Fiscal Year 1981, the Defense De-

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[1] Letter from Robert G. Rabben, Assistant General Counsel for Legislation, Department of Energy, to John D. Dingell, Chairman, Subcommittee on Oversight and Investigations, April 6, 1982 (hereinafter cited as DOE Data Letter II).

[2] U.S. Congress, House, Committee on Energy and Commerce, Wasted Energy Dollars in the Federal Government, Hearings before the Subcommittee on Oversight and Investigations, House of Representatives, 97th Cong., 1st Sess., 1981, p. 2 (hereinafter cited as Hearings). This estimate is in 1985 dollars and assumes that energy consumption remains constant at Fiscal Year 1980 levels.

[3] DOE Data Letter II, supra note 1.

[4] Ibid. One Quad equals one quadrillion British thermal units of energy.

[5] U.S. Department of Energy, Federal Energy Management Program, Energy Management in the Federal Government Annual Report for Fiscal Year 1978, p. 5.

[6] DOE Data Letter II, supra note 1; U.S., Department of Energy, Federal Energy Management Program, Federal Government Energy Management Annual Report for Fiscal Year 1980, p. 2–1. (Hereinafter cited as 1980 FEMP Annual Report).

[7] DOE Data Letter II, supra note 1.

[8] Ibid.; U.S., Department of Defense, Office of the Deputy Assistant Secretary of Defense for Energy, Environment, and Safety, Department of Defense Energy Management Plan (Washington, D.C., March 1981), p. I–1. (hereinafter cited as 1981 Defense Energy Management Plan).

partment's energy bill totalled $10.7 billion, accounting for 6.6 percent of the DOD budget.[9]

Nine civilian agencies are also major energy users. These agencies, which account for 17 percent of Federal energy consumption, include the Department of Energy (4.8 percent), the United States Postal Service (2.9 percent), the General Services Administration (2.4 percent), the Veterans' Administration (2.1 percent), the Department of Transportation (1.9 percent), the National Aeronautics and Space Administration (1.2 percent), the Interior Department (0.6 percent), the Agriculture Department (0.6 percent), and the Department of Health and Human Services (0.6 percent).[10]

III. 1970's: Initiation of a Coordinated Program to Restrain Federal Energy Use

Although some Federal agencies began energy conservation initiatives before 1970, the Federal government did not launch a coordinated program to conserve energy in its own operations until 1973.[11] The first executive directive to restrain Federal energy use, issued by President Nixon on June 29, 1973, required Federal agencies to reduce energy consumption by seven percent during Fiscal Year 1974.[12] The President mandated that all agencies increase their use of mass transit and energy-efficient vehicles and reduce levels of air conditioning and lighting.[13] In addition, President Nixon established the Federal Energy Management Program to coordinate the energy conservation efforts of individual agencies.[14]

During the Ford and Carter Administrations, additional energy conservation actions were mandated in the Federal sector.[15] In December 1975, Congress enacted the Energy Policy and Conservation Act (EPCA) which required the President to develop and implement a ten-year plan to conserve energy in Federal buildings.[16]

In July 1977, President Carter sought to strengthen the government's energy conservation program by issuing Executive Order 12003. This Executive Order reinforced the provisions of EPCA by mandating specific goals for energy conservation in Federal buildings; Federal agencies were required to achieve a 20 percent improvement in the

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[9] Hearings, supra note 2, p. 235.

[10] DOE Data Letter II, supra note 1.

[11] U.S., Department of Energy, Federal Energy Management Program, Energy Management in the Federal Government Annual Report for Fiscal Year 1978, December 1979, p. 1; U.S., Department of Defense, Defense Audit Service, Report on the Interservice Audit of the DOD Energy Conservation Program, July 1977, p. 2.

[12] U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1975), Richard Nixon, 1973, p. 630.

[13] Ibid.

[14] U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1975), Gerald R. Ford, 1974, pp. 381–82.

[15] U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1979), Gerald R. Ford, 1976, p. 2844; U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1980), Jimmy Carter 1979, p. 216; U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1980), Jimmy Carter, 1979, p. 647; Executive Order 11912, 41 Fed. Reg. 15825 (Apr. 15, 1976); Executive Order 12003, 42 Fed. Reg. 37523 (July 22, 1977); Public Law No. 94–163 § 381 (1975) (current version at 42 U.S.C.A. § 6361 (1981)); Public Law No. 95–91 (1977) (current version at 42 U.S.C.A. § 7101 et seq. (1981)); Public Law 95–619 §§ 541–551 (1978) (current version at 42 U.S.C.A. §§ 8251–8261 (1981)).

[16] Public Law No. 94–163 § 381 (1975) (current version at 42 U.S.C.A. § 6361 (1981)).

energy efficiency of existing buildings and a 45 percent improvement in the energy efficiency of new buildings between Fiscal Years 1975 and 1985. The Executive Order also required agencies to develop plans for conserving fuel in Federally-owned vehicles.[17]

Congress further underscored its support for energy conservation in the Federal government in the Department of Energy Organization Act.[18] One of the major purposes of the Act was "* * * to promote maximum possible energy conservation measures * * *" throughout the Federal sector.[19]

The National Energy Conservation Policy Act of 1978 (NECPA) represents the latest Congressional initiative in the area of Federal agency energy conservation.[20] This legislation, one of the five components of President Carter's National Energy Act, requires Federal agencies to conduct energy audits of buildings with more than 1,000 square feet of floor space and to implement energy conservation retrofit measures in buildings selected as a result of the energy audits.[21] NECPA also seeks to highlight energy conservation measures in the Federal budget process by requiring agencies to identify funds for conservation measures in a separate line item.[22]

Energy conservation actions in the Federal sector have been spurred by several considerations. The first major conservation initiatives were motivated by severe threats to our national security. Faced with a 10 to 15 percent shortfall in imported petroleum during the Arab oil embargo of 1973,[23] it was necessary for the Federal government to undertake strong conservation measures.[24]

Concerns about national security also spurred energy conservation initiatives by President Carter. For example, in early 1979, President Carter urged the heads of executive agencies to "take immediate steps to reduce the use of petroleum fuels * * * because of the world shortfall in oil production resulting from the Iranian situation." [25]

Conservation measures in the Federal sector have also been driven by anxiety about the Nation's skyrocketing energy bills. Following the Arab oil embargo, the Federal government faced a quadrupling of world oil prices, and government officials recognized that aggressive energy conservation measures were necessary to control government spending. Thus, in a major "action plan" for Federal energy management developed during the Ford Administration, the Administrators of the Federal Energy Administration and the General Services Administration stressed that:

> Costs of all energy have risen dramatically in the last two years and this can be expected to continue in the future. It

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[17] Executive Order 12003, 42 Fed. Reg. 37523 (July 22, 1977).
[18] Public Law No. 95–91 (1977) (current version at 42 U.S.C.A. § 7101 et seq. (1981)).
[19] Ibid., § 102.
[20] Public Law No. 95–619 §§541–551 (1978) (current version at 42 U.S.C.A. §§ 8251–8261 (1981)).
[21] 42 U.S.C.A. § 8257 (1981).
[22] 42 U.S.C.A. § 8259 (1981).
[23] U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1975), Richard Nixon, 1974, p. 19; Congressional Quarterly, The Middle East: U.S. Policy, Israel, Oil, and the Arabs (Washington, D.C.: Congressional Quarterly, 1977), p. 139.
[24] U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1975), Gerald R. Ford, 1974, pp. 381–82.
[25] U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1980), Jimmy Carter, 1979, p. 216.

> is obvious that our society can no longer afford to use energy at ever increasing rates * * *. We must make every effort to eliminate waste and obtain the most output or benefit from those energy resources used * * *. In view of the price increases, sound fiscal management demands strong energy management * * *.[26]

Concern about the need for energy cost reduction in the Federal government was heightened further by the doubling of world oil prices during the Iranian crisis of 1979.

As a result of conservation initiatives in the Federal sector, the Federal government achieved reductions in its energy consumption during the 1970's. According to the Department of Energy, energy use in Federal agencies was cut by 6.3 percent from Fiscal Year 1975 to Fiscal Year 1980.[27]

Progress by several agencies was particularly noteworthy. The National Aeronautics and Space Administration and the United States Postal Service succeeded in reducing their building energy use per square foot by over twenty percent between Fiscal Years 1975 and 1980.[28]

IV. 1980's: Substantial Opportunities for Energy Savings Remain in the Federal Government

Although the Federal government made strides in reducing its energy use during the 1970's, substantial opportunities remain to cut Federal energy costs. These costs have tripled between Fiscal Year 1975 and Fiscal Year 1981, increasing from $4.1 to $12.5 billion.[29] Given this enormous Federal energy bill, just a one percent decrease in consumption would result in annual savings of about $125 million. This amount would be sufficient to retrofit approximately 125,750 homes under DOE's weatherization assistance program for low-income individuals.[30] Even the Deputy Secretary of Defense has conceded that "[e]normous savings potential exists if energy conservation is pursued aggressively."[31]

Energy studies performed by watchdog agencies in recent years underscore the large potential for slashing wasted energy dollars in the Federal government. For example, according to a September 1980 report of the Office of Inspector General of the General Services Administration (GSA), $40 to $60 million annually could be saved in

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[26] Letter from Frank Zarb, Administrator, Federal Energy Administration, and Arthur F. Sampson, Administrator, General Services Administration, to Rogers Morton, Chairman, Energy Resources Council, September 5, 1975.

[27] 1980 FEMP Annual Report, supra note 6, p. 1–3; DOE Data Letter II, supra note 1. It should be noted that the Department of Energy has expressed concern about the accuracy of this data which is provided to DOE from the various Federal agencies. In a letter of February 24, 1982, Mr. Robert G. Rabben, DOE's Assistant General Counsel for Legislation, informed Chairman Dingell that:

> With some agencies, frequent revisions resulting in significant changes are the rule rather than the exception. For example, we recently received many changes in the FY 1975 baseline data. This has caused problems in compiling and analyzing data since these revisions are often of such magnitude that the trends identified in the original data are reversed by the revised data.

[28] 1980 FEMP Annual Report, supra, note 6, p. 8–8.

[29] Ibid., pp. 1–3; DOE Data Letter II, supra note 1.

[30] U.S., Department of Energy, Weatherization Assistance Program.

[31] Memorandum for the Secretaries of the Military Departments from Frank C. Carlucci, Deputy Secretary of Defense, March 16, 1982 (hereinafter cited as Carlucci Memorandum).

GSA alone through the implementation of operational and minor retrofit changes requiring little or no monetary investment.[32] Over the longer term, millions more could be saved through more extensive retrofit measures.[33]

In their review of thirteen GSA buildings, the GSA inspectors found that energy consumption could be reduced 20 to 30 percent with little additional outlay of funds.[34] The inspectors concluded that $384,000 could be saved annually in just one building alone, the Detroit IRS Data Center, through the adoption of low-cost conservation measures.[35] Under operating practices prevailing at the time of the inspection, air conditioner chillers were being operated at the IRS Data Center in the winter even during periods of below zero temperatures.[36]

A 1981 report by the Defense Audit Service suggested even greater opportunities for reducing wasted energy dollars. In this report on energy consumption in military family housing, DOD auditors concluded that:

> The potential for energy conservation in residential areas was often not realized due to shortages of money, time, initiative, imagination, and incentives. An effectively managed energy program for family housing has the potential to reduce energy use by 40 trillion British thermal units (Btus), or 30 percent of the 135 trillion Btus currently used in residential areas.[37]

In its report, the Defense Audit Service noted that "[f]or Fiscal Year 1981, the energy costs for family housing are expected to be about $519 million.[38] Thus, a 30 percent reduction in the energy consumed in military family housing would provide savings of millions of dollars.

Similarly, a report on the Army Energy Program issued in November 1980 concluded that "significant energy savings from low- or no-cost management actions still remained to be achieved by many Army installations." [39] The report emphasized that in two installations alone "additional annual savings of $560,000 could have been achieved * * * if command had implemented more low- or no-cost conservation actions." [40]

The Federal government has not only wasted taxpayers dollars by failing to implement energy conservation measures; the government has also wasted energy dollars through ineffective management of some significant energy conservation investments. For example, one of the major programs which the Department of Defense has undertaken to meet 1985 energy conservation goals, the installation of energy moni-

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[32] U.S., General Services Administration, Office of Inspector General, Review of GSA's Energy Conservation Program in Selected Public Buildings, September 30, 1980, p. 1; Hearings, supra note 2, p. 41.

[33] U.S., General Services Administration, Public Buildings Service, Third Annual Report on Energy Management, September 1980, p. 23.

[34] Hearings, supra note 2, pp. 24, 41.

[35] Ibid., pp. 2, 26, 31.

[36] Ibid., pp. 2, 31.

[37] U.S. Department of Defense, Defense Audit Service, Report on the Review of Energy Consumption in Military Family Housing, August 12, 1981, p. 3 (hereinafter cited as Military Family Housing Audit).

[38] Ibid., p. 1.

[39] U.S. Department of the Army, Army Audit Agency, Audit of the Army Energy Program, November 24, 1980, p. 7 (hereinafter cited as Army Energy Program Audit).

[40] Ibid.

toring and control systems (EMCS) at military installations, has failed miserably to date because of significant project delays and operational problems.[41] As a result, taxpayers have been denied millions of dollars in energy savings.[42]

V. 1981 and 1982: Reversals Threaten the Federal Government's Progress in Curbing Wasted Energy Dollars

A. PRESIDENT REAGAN GENERATES "ANTI-CONSERVATION" SIGNALS

Throughout his Administration, President Reagan has underscored his commitment to rooting out fraud and waste in government programs.[43] However, the President has failed to designate energy inefficiency clearly under the umbrella of wasteful Federal spending.

To date, the President has failed to make a commitment or even a comment about the need for aggressive action to reduce wasted energy dollars within the Federal government.[44] Even the National Energy Policy Plan of July 1981 and the President's Message accompanying such Plan are silent about the future of programs to curb the government's own energy use.[45] This silence about Federal energy conservation programs contrasts markedly with strong commitments to such efforts by three previous Presidents.[46]

The President's silence about Federal energy conservation ignores the advice of leading corporate energy managers who strongly emphasize that top-management commitment is a key ingredient of an effective energy conservation program.[47] For example, the energy manager of Kaiser Aluminum & Chemical Corporation has stressed that:

> An essential element in any energy conservation program is a commitment by the leaders in the organization who have the responsibility and authority to make a commitment for improvement. In a private corporation this starts with the chief executive officer and moves down to division vice presidents, subdivision managers, plant managers and finally to first-line supervisors. It is important that the commitment be made at each level. A strong position by the chief executive officer can insure that the commitment moves down the line. The same kind of commitment applies to the Federal govern-

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[41] Hearings, supra note 2, pp. 141–45, 147, 168–69, 175–76.
[42] Ibid., pp. 145–46, 242–43.
[43] U.S., President, Weekly Compilation of Presidential Documents (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, March 30, 1981), pp. 344–49.
[44] Hearings, supra note 2, pp. 2, 43, 137.
[45] U.S., Department of Energy, Securing America's Energy Future: The National Energy Policy Plan, July 1981; U.S., President, Weekly Compilation of Presidential Documents (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, July 17, 1981), p. 772.
[46] See supra note 15.
[47] Hearings, supra note 2, pp. 16, 37, 46, 48–49; Letter from Howard Oldenburg, Manager for Energy Programs, J. C. Penney Company, Inc., to the Subcommittee on Oversight and Investigations, January 18, 1982, pp. 1–2 (hereinafter cited as J. C. Penney Letter); Telephone Interview with Kenneth Ellis, Energy Conservation Program Manager, International Business Machines Corporation, February 1982 (hereinafter cited as Ellis Interview).

> ment. Each management level * * * needs to accept an energy conservation commitment.[48]

In fact, the only direct action which President Reagan has initiated in the area of Federal energy conservation—the rescission of the Emergency Building Temperature Restrictions (EBTR)—has resulted in millions in additional energy costs annually.

In revoking the EBTR on February 17, 1981, President Reagan emphasized that:

> Although restrictions on building temperatures may result in reduced consumption of fuel, I have concluded that the regulatory scheme designed to accomplish that objective imposes an excessive regulatory burden and that voluntary restraints and market incentives will achieve substantially the same benefit without the regulatory cost.[49]

While the justification for the President's decision to rescind the building temperature restrictions focused on the regulatory burdens imposed on the private sector, the rescission action also affected the Federal sector.[50] As a result, substantial additional costs will be imposed on the Federal Treasury because the President's action served to relax temperature restrictions during the heating season from 65 to 68 degrees Fahrenheit in many Federal agencies.[51] One of the major agencies impacted was the General Services Administration where the President's action has already cost taxpayers millions of dollars.

The adverse impact on agency budgets caused by the revocation of the temperature restrictions is underscored by a letter from Mr. A. R. Marschall, Commissioner of GSA's Public Buildings Service, to Mr. David Stockman, Director of the Office of Management and Budget.[52] In this letter of February 1981, Mr. Marschall protested the President's decision to relax temperature restrictions in Federal buildings during the heating and cooling seasons.[53] He emphasized that:

> We have reviewed a copy of the President's proclamation rescinding the Emergency Building Temperature Regulations effective February 7, 1981, and want to bring to your attention some information concerning this subject as it applies to a program of this agency.
>
> With the rescission of the emergency regulations, policies governing heating and cooling functions in buildings under the control of the General Services Administration (GSA)

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[48] Hearings, supra note 2, pp. 48–49.
[49] U.S., President. Weekly Compilation of Presidential Documents (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, February 17, 1981), p. 122.
[50] 44 Fed. Reg. 39354 (July 5, 1979).
[51] Hearings, supra note 2, pp. 304–05, 307–08; Memorandum from A. R. Marschall, Commissioner, Public Buildings Service, to Regional Administrators of the General Services Administration, June 22, 1981 (hereinafter cited as Marschall Memorandum).
[52] Letter from A. R. Marschall, Commissioner, Public Buildings Service, General Services Administration, to David A. Stockman, Director of the Office of Management and Budget, February 27, 1981.
[53] Ibid.

are stated in Federal Property Management Regulation § 101–20.116–3. This regulation states that work space temperatures be maintained during working hours at 65° to 68°F during the heating season and at 78° to 80°F during the cooling season. However, as you may be aware, this agency's fiscal year 1981 and 1982 budgets contain funds to provide heating only at 65°F and cooling from 78° to 80°F.

Operation of our buildings using these temperature settings during the past several years has presented only isolated problems which have easily been attended to, has not impaired the fulfillment of the mission of agencies occupying GSA space, and has proven to be a prudent and economical way to manage our buildings with lowered costs * * *

It is estimated that our fiscal year 1980 utility and fuel costs would have increased by about $5 million for each degree change in heating and cooling in our buildings. With costs for utilities and fuels estimated to escalate by 15 percent annually, each degree change would cost $5,750.000 per degree in fiscal year 1981 and $6,612.500 per degree in fiscal year 1982.

In view of our operating experience in attempting to manage buildings and provide services in a cost effective manner and in order to achieve sufficient energy use reduction goals, we propose to heat and cool buildings at 65° and 80°F respectively.[54]

However, although GSA clearly warned OMB that the relaxation of temperature restrictions would increase GSA energy bills by millions of dollars annually,[55] OMB failed to apply its cost-cutting knife to this wasteful use of tax dollars. Rather, OMB ultimately supported and Congress approved a supplemental appropriation in mid-1981 providing funds for the relaxation of temperature restrictions and unanticipated fuel cost increases in GSA buildings.[56]

Although the direct effects of the EBTR revocation are substantial, the indirect effects of this action may be even more significant. Since this rescission represented the first and only action by the President in the area of Federal agency energy conservation, this action had an impact far beyond its immediate effect. Some agency officials interpreted the rescission as an endorsement of a "hands-off" approach to management of the Federal government's own energy use.

Other actions by President Reagan have also been interpreted by some agency officials as a signal that the Administration has abandoned a commitment to Federal energy conservation efforts. The President's persistent statements in support of the dismantlement of the Department of Energy (DOE) [57] and his proposals for drastic budget cuts in Federal conservation programs [58] have fostered the view among

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[54] Ibid.
[55] Ibid.
[56] Marschall Memorandum, supra note 1.
[57] Congressional Quarterly, Congressional Quarterly Weekly Report (Washington, D.C.: Congressional Quarterly, Inc., November 1, 1980), p. 3286; U.S., President, Weekly Compilation of Presidential Documents (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, September 28, 1981), p. 1027; U.S. President, Weekly Compilation of Presidential Documents (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, December 21, 1981), p. 1378.
[58] U.S., Congress, Congressional Budget Office, An Analysis of President Reagan's Budget Revisions for Fiscal Year 1982 (Washington, D.C.: Government Printing Office, March 1982), p. A–14; U.S. Department of Energy, Federal Energy Programs FY 1983 Budget Highlights (Washington, D.C., February 1982), pp. 17, 32.

some agency officials that energy conservation is a low-priority in the current Administration, even when the Federal government's own energy use is involved. For example, at a meeting of the energy coordinators of the twenty largest energy-using agencies on October 28, 1981, many officials emphasized that agency programs to reduce wasted energy dollars will continue to collapse unless the President provides a commitment to an aggressive energy conservation program.[59] For example, a representative from the Department of Transportation stressed that "since the new Administration was not pushing conservation, the agencies were not pushing it." [60] Other officials argued that "progress will be weakening until there is something from the Administration," that "the emphasis [on conservation] is off because there is no direction," and that "there is a need for a reaffirmation of [Administration] commitment real fast." [61]

The Administration has also sought to terminate the Federal Energy Management Program,[62] the only government-wide conservation program, in Fiscal Year 1983. The proposed elimination of this program contrasts markedly with the President's decision to retain several major energy functions, such as a high-risk research and emergency planning, in successor agencies to DOE.[63] By failing to designate agency energy conservation as a important Federal role, the Administration has strongly implied that this area is a low priority on its agenda.

The magnitude of concern about negative Administration signals regarding Federal energy conservation is underscored by a memorandum to the Secretaries of the military departments issued by the Deputy Secretary of Defense. In this memorandum of March 16, 1982, Mr. Frank C. Carlucci emphasizes that:

> I would like to correct what seems to be a misunderstanding of Administration policy on energy conservation. This Administration has recognized that the free market, not the government, is the most effective inducer of energy conservation. Consequently, actions have been taken to reduce the Department of Energy budget, and ultimately to dismantle DOE. Some have misinterpreted these actions as a signal that the Administration is "anti-conservation." This is not true.[64]

It is unfortunate that President Reagan has not recognized that "leadership signals" are as important as "price signals" in spurring Federal agency energy conservation. The President should act promptly to eliminate confusion about his policies in this area by issuing a memorandum to the heads of all executive agencies express-

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[59] U.S., Department of Energy, Federal Energy Management Program, Agency Energy Coordinators' Meeting, October 28, 1981 (hereinafter cited as Energy Coordinators' Meeting).
[60] Ibid.
[61] Ibid.
[62] Hearings, supra note 2, p. 260; U.S., Department of Energy, Congressional Briefing on the Fiscal Year 1983 Budget, February 6, 1982 (hereinafter cited as DOE Congressional Briefing).
[63] U.S. President, Weekly Compilation of Presidential Documents (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, December 21, 1981), p. 1378.
[64] Carlucci Memorandum, supra note 31.

ing strong support for aggressive measures to eliminate wasted energy dollars.

B. THE DEPARTMENT OF ENERGY OFFERS WEAK LEADERSHIP

The role of coordinating agency energy conservation efforts has been vested in the Federal Energy Managment Program (FEMP) since 1973.[65] Over the years, FEMP has promoted the conservation programs of individual agencies by providing guidance necessary to implement Presidential and Congressional initiatives, monitoring and evaluating agency conservation performance, analyzing Federal energy cost trends and projections, providing technical assistance, and serving as a clearinghouse for the exchange of information.[66] FEMP has also provided the major source of staff support for interagency energy conservation committees, such as the so-called "656 Committee" which was established under the authority of Section 656 of the DOE Organization Act.[67]

Since its establishment, the Federal Energy Management Program has resided in a major Federal energy agency. When the Department of Energy (DOE) was created in 1977, the Federal Energy Management Program was transferred from the Federal Energy Administration to DOE.[68]

Although the promotion of Federal agency energy conservation was one of the major purposes of the Department of Energy Organization Act,[69] DOE has failed to provide strong leadership in this critical area. In fact, reports by both the General Accounting Office and the Congress in 1979 and 1980 expressed concern that DOE's Federal Energy Management Program was not providing sufficient leadership in the fight against energy waste.[70]

However, while DOE's Federal Energy Management Program never achieved its full potential under the Ford and Carter Administrations, it has barely gotten off the ground under the current Administration. Even DOE's Assistant Secretary for Conservation and Renewable Energy, Mr. Joseph J. Tribble, has conceded that the Department has not moved aggressively to encourage conservation by Federal agencies. This point is underscored by a discussion at the Subcommittee's October 23rd hearing between Mr. Tribble and the Subcommittee's Minority Counsel, Mr. James Christy.

> Mr. CHRISTY. Are you satisfied in your brief tenure, and experience with the Department of Energy at this point that the Department is doing all that it can to "jawbone" or to work with the other agencies in encouraging conservation, or do you think that more can be done?

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[65] U.S., General Accounting Office. The Federal Government Needs a Comprehensive Program to Curb Its Energy Use (Washington, D.C., December 12, 1979), p. 3 (hereinafter cited as GAO Report on FEMP)).

[66] 1980 FEMP Annual Report, supra note 6, pp. 1–2.

[67] Public Law 95–91 § 656 (1977) (current version at 42 U.S.C.A. § 7266 (1981)).

[68] Ibid., § 301.

[69] Ibid., § 102.

[70] Hearings, supra note 2, p. 5; GAO Report on FEMP, supra note 65; U.S., Congress, House of Representatives, Energy Conservation Within the Federal Government: The Department of Energy's Record, Seventh Report by the Committee on Government Operations (Washington, D.C.: U.S. Government Printing Office, November 1979) (hereinafter cited as Government Operations Committee Report); U.S., Congress, House of Representatives, Department of the Interior and Related Agencies Appropriations Bill, 1981, H. Rept. 96–1147 To Accompany H.R. 7724, 96th Cong., 2d Sess., 1980, pp. 78–79.

Mr. TRIBBLE. I am not satisfied with what has been done; I do feel more can be.[71]

Four months after the Subcommittee's hearing, Mr. Tribble admitted again that the Department of Energy had failed to provide strong leadership in the area of Federal agency energy conservation. At a meeting of the major energy-using agencies on February 26, 1982, Mr. Tribble emphasized that DOE had "not done enough" to restrain Federal energy consumption and that "we take some of the blame." [72]

Administration actions since January 1981 have served primarily to disrupt and downgrade the Federal Energy Management Program rather than to improve its effectiveness. For example, on July 1, 1981, DOE's top officials reduced the status of FEMP from an office to a branch, the lowest organizational unit.[73] This action ignored the advice of the General Accounting Office and Congressional Committees; reports issued by these bodies have recommended that FEMP be established as a high-ranking office reporting directly to the Under Secretary of Energy.[74]

Other Administration actions concerning the organization and resources of the Federal Energy Management Program have also severely disrupted the operation of this important program. Reorganizations, reductions-in-force, and the uncertainty created by proposals to dismantle or reorganize DOE have resulted in a devastating loss of experienced personnel and have adversely affected staff morale. In mid-1981, four of the twelve positions in FEMP were eliminated as a result of a major reorganization of DOE's conservation program.[75] However, it is even more significant that only one member of the current FEMP staff has served in the program continuously for more than one year. These problems are compounded by the Administration's announced intention to terminate the Federal Energy Management Program in Fiscal Year 1983.[76]

One of the only significant actions taken by top-level DOE officials in the area of Federal agency energy conservation since January 1981 has been the convening of a meeting of the Interagency Federal Energy Policy Committee ("656 Committee"). The committee is comprised of the senior energy officials of the largest energy-using agencies.[77]

At the "656 Committee" meeting, held on February 26, 1982, DOE's Under Secretary, Mr. Guy Fiske, and the Department's Assistant Secretary for Conservation and Renewable Energy, Mr. Joseph J. Tribble, urged agency officials to pursue energy conservation measures as a means of reducing the budget deficit. Mr. Tribble also expressed concern about recent trends in Federal energy usage which indicated a significant increase in consumption between Fiscal Years 1980 and 1981.[78]

The Subcommittee commends DOE officials for scheduling their first meeting of the "656 Committee" as a result of our vigorous prod-

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[71] Hearings, supra note 2, p. 158.
[72] U.S., Department of Energy, Meeting of the Interagency Federal Energy Policy Committee, February 26, 1982 (hereinafter cited as 656 Committee Meeting).
[73] Hearings, supra note 2, pp. 124–28.
[74] Ibid., p. 14; Government Operations Committee Report, supra note 70, p. 17.
[75] Hearings, supra note 2, p. 112.
[76] Ibid., p. 260; DOE Congressional Briefing, supra note 62.
[77] Public Law 95–91 § 656 (1977) (current version at 42 U.S.C.A. § 7266 (1981)).
[78] 656 Committee Meeting, supra note 72.

ding.[79] At our hearing in October 1981, we had voiced strong concern that this Committee, which had been active during the last Administration, had not met since November 1980.[80]

However, unfortunately, even the "656 Committee" meeting was marred by an uneven performance by DOE officials. While these officials strongly supported the concept of Federal agency energy conservation, they significantly impaired their own effectiveness by demonstrating a lack of familiarity with the details of the Federal Energy Management Program.

For example, in his introductory remarks to the "656 Committee", DOE's Under Secretary suggested that the "656 Committee" might want to consider an award program for the "best idea" in energy conservation.[81] Mr. Fiske presented this idea as if it were an innovative approach which had never been discussed by the "656 Committee." Yet, representatives of many of the agencies in attendance at the meeting had been complaining for months about DOE's inaction on nominations for Federal Energy Efficiency Awards which they had submitted in February 1981.[82]

Although the Subcommittee believes that DOE has made some progress in rehabilitating the Federal Energy Management Program since our October 1981 hearing, we are concerned that the opportunity to build a truly effective program will be eliminated in Fiscal Year 1983. At that time, the Administration proposes to eliminate the Federal Energy Management Program and to rely solely on the energy management initiatives of individual agencies.[83] Under this proposal, it is likely that individual agencies will not be held accountable for their energy conservation performance. Yet agency energy officials have argued that accountability is extremely important in spurring energy conservation initiatives.

C. THE OFFICE OF MANAGEMENT AND BUDGET ABDICATES ITS RESPONSIBILITY

Corporate officials consistently emphasize that effective energy management "makes good business sense." [84] Yet the Office of Management and Budget has abdicated its responsibility to promote the implementation of sound energy management practices throughout the Federal government.

In the area of Federal energy conservation, the Office of Management and Budget has been delegated several important responsibilities under Executive Order 12003. Under this Order, OMB is required to review annual budget estimates for the implementation of agency energy conservation plans and to establish procedures governing the development of such budget estimates. In addition, the Office of Management and Budget is directed to consult with the Department of

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[79] Hearings, supra note 2, pp. 108–09, 113–16.
[80] Ibid.
[81] 656 Committee Meeting, supra note 72.
[82] Memorandum from Captain Robert E. Mumford, Jr., Assistant for Energy Conservation, Office of the Secretary of Defense, to the Under Secretary of Energy, May 6, 1981; Letter from Fred J. DiLisio, Special Assistant to the Deputy Postmaster General, to the Acting Under Secretary of Energy, June 15, 1981.
[83] Hearings, supra note 2, p. 260; DOE Congressional Briefing, supra note 62.
[84] Ellis Interview, supra note 47.

Energy about agency budget estimates for the implementation of agency energy conservation plans.[85]

President Reagan has also vested OMB with a central role in his program to control wasteful government spending. Under Executive Order 12301, the President has designated the Deputy Director of the Office of Management and Budget as the Chairman of the President's Council on Integrity and Efficiency. This Council is required to "develop plans for coordinated government-wide activities which attack fraud and waste in government programs and operations." [86]

However, OMB officials have not exercised their authority under either Executive Order 12003 or Executive Order 12301 to launch an aggressive attack against wasted energy dollars in the Federal government. Rather, these officials have abdicated their responsibility to curb Federal energy use.

Throughout the current Administration, OMB officials have followed a "laissez-faire" approach concerning energy management by individual agencies. In a March 18, 1982 letter to the Subcommittee, OMB Director David A. Stockman conceded that management of energy usage and the identification of energy conservation opportunities are being "done on a decentralized basis." [87] He argued that energy prices and Administration efforts to reduce spending government-wide provide sufficient incentives for agency officials to develop and implement plans to use energy more efficiently.[88]

However, corporate energy managers have emphasized that price incentives are not alone sufficient to assure effective control of energy consumption in the private or public sectors. They indicate that top-management commitment and management control systems, including energy reduction goals, investment and operations plans, reporting systems, technical training programs, and awards programs, must supplement price incentives to combat wasted energy dollars successfully.[89]

For example, the Associate Director of Energy for Kaiser Aluminum & Chemical Corporation has stressed that:

> Energy conservation in the private sector is driven by bottom-line economics and competitive pressures. This motivation does not exist in the government, but in spite of this difference I believe well-managed energy conservation programs in both sectors will exhibit many similar characteristics. Even though a corporation has a profit motive, the need for cost control and cost reduction does not automatically translate itself to all parts of the business. It is necessary to have strong management cost control systems in place to insure that energy cost reductions are achieved. These same controls are equally applicable to government organizations.[90]

Similarly, the Manager of Energy Programs for J. C. Penney Company, Inc. emphasized that the profit motive alone will not assure meaningful reductions in energy consumption.[91] He argued that "sig-

[85] 42 Fed. Reg. 37523 (July 22 1977).
[86] Executive Order 12301, 46 Fed. Reg. 19211 (March 30, 1981).
[87] Hearings, supra note 2, p. 259.
[88] Ibid., p. 260.
[89] Hearings, supra note 2, pp. 16–22, 45–46, 48–51; J.C. Penney Letter, supra note 47, pp. 1–2.
[90] Hearings, supra note 2, p. 48.
[91] J. C. Penney Letter, supra note 47, pp. 1–2.

nificant savings require a highly developed technical discipline and a clearly defined organization with strong accountability and positive leadership." [92]

Yet, OMB has failed to exert positive leadership and assure strong accountability in the area of energy conservation. Although corporate energy managers stress that all levels of management should monitor energy consumption, energy costs, and energy savings,[93] OMB admitted in a letter of March 1982 that it could not provide our Subcommittee with an estimate of the Federal government's energy bill for Fiscal Year 1983.[94] In other words, one month after the submission of the President's budget for Fiscal Year 1983, OMB conceded that it could not provide an estimate of a budgetary item accounting for nearly two percent of the Federal budget.

Moreover, even the limited data which OMB provided to the Subcommittee—an estimate of DOD petroleum costs for Fiscal Year 1983—appears totally inaccurate. OMB projected that DOD petroleum costs would escalate from $8.0 billion in Fiscal Year 1981 to $8.9 billion in Fiscal Year 1983.[95] Yet, information provided to the Subcommittee directly from DOD indicated that DOD petroleum costs already reached $8.84 billion in Fiscal Year 1981.[96]

The Office of Management and Budget has also abdicated its responsibility to provide a thorough review of annual agency budget estimates for energy conservation retrofit and to assure consideration of cost-effective conservation investments. In fact, OMB officials did not develop a comprehensive summary of energy conservation investments government-wide until after the submission of the President's budget for Fiscal Year 1983. The Subcommittee's investigation revealed that OMB officials had to call the energy coordinators of the various energy-using agencies several weeks after the President's budget had been submitted to Congress in order to respond to our request for a summary of funds proposed for energy conservation retrofit.

OMB's deficiencies in the area of energy investment budgeting are symptomatic of the agency's historic failure to provide adequate policy guidance in the area of capital budgeting. As the GAO emphasized in a February 1981 report entitled, "Capital Budgeting: A Collection of Haphazard Practices," OMB has failed to give adequate attention to capital investment policies.[97]

In its report, GAO stressed that "just as a private company must make capital investments to assure future production, the American Government must make capital investments to assure a foundation for the future growth and prosperity of the Nation." [98] However, the watchdog agency expressed concern that current Federal budget practices discourage capital investment, particularly in times of budget cutbacks. GAO stated that "[w]hen economic conditions cause budget cutbacks, competition for * * * discretionary fund[s] increases * * * and physical capital investment tends to lose in favor of outlays for current operations." [99]

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[92] Ibid., p. 2.
[93] Hearings, supra note 2, p. 17.
[94] Ibid., p. 259.
[95] Ibid.
[96] Ibid., p. 236.
[97] U.S., General Accounting Office, Federal Capital Budgeting: A Collection of Haphazard Practices (Washington, D.C., February 26, 1981).
[98] Ibid., p. 86.
[99] Ibid., p. 89.

As a result of current budget practices, the Administration has cut funding for energy conservation projects significantly in many agencies.[100] The case of the National Aeronautics and Space Administration (NASA) illustrates the problem in this area.

According to energy officials, NASA's management traditionally has been extremely supportive of the agency's energy conservation program, including proposed investment projects. However, in Fiscal Years 1982 and 1983, NASA program officials, faced with "survival mode" budget constraints by OMB, eliminated funding for several major retrofit projects which promised paybacks of less than four years.[101] For example, a retrofit project at Langley Research Center which promised savings of $800,000 in annual energy costs and a payback of less than three years was eliminated from NASA's budget for Fiscal Year 1982.[102]

NASA officials emphasize that current Federal budgeting practices are largely to blame for the cancellation of high payback conservation projects. For example, Mr. Walter Olstad, NASA's Associate Administrator for Management, stressed at a February 1982 meeting of government energy officials that "within the yearly budgeting process, it is hard to justify savings that will come years down the road." [103] Other officials emphasize that when energy retrofit projects compete with mission-related space projects in a "survival mode" budget, mission-related projects are given priority.[104] In other words, if an agency official is trying to save a program, he or she has an incentive to focus limited resources in projects which will immediately underscore the benefits of their program rather than in energy conservation projects. Thus, even though many energy conservation projects promise to reduce future increases in the budget deficit, investments in these projects are discouraged in the annual budget cycle which focuses on short-term expenditures.

Other agencies face retrofit budget cutbacks that are even more severe than those experienced by NASA. For example, energy conservation retrofit funds have been completely zeroed out of the Fiscal Year 1983 budget at the U.S. Forest Service within the Department of Agriculture.[105] Yet many projects contemplated by this agency promise paybacks of less than two years.

OMB has also failed to implement a key Congressional mandate that would have encouraged increased consideration of cost-effective energy conservation projects. This mandate, set forth in Section 549 of the National Energy Conservation Policy Act, requires that each agency identify funds for energy conservation retrofit measures in a separate line item. However, OMB officials, under both the Carter and Reagan Administrations, have refused to enforce Section 549.[106]

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[100] Hearings, supra note 2, pp. 249–54, 302.

[101] Letter from John F. Murphy, Assistant Administrator for Legislative Affairs, National Aeronautics and Space Administration, to the Subcommittee on Oversight and Investigations, April 1, 1982; Telephone Interview with Francis X. Durso, Chief of the Utilities and Energy Management Division, National Aeronautics and Space Administration, February 12, 1982.

[102] Memorandum from Mary D. Kerwin, Legislative Affairs Specialist, National Aeronautics and Space Administration, to the Subcommittee on Oversight and Investigations, February 22, 1982.

[103] 656 Committee Meeting, supra note 72.

[104] Telephone Interview with Francis X. Durso, Chief of the Utilities and Energy Management Division, National Aeronautics and Space Administration, February 12, 1982.

[105] Hearings, supra note 2, p. 249.

[106] Ibid., pp. 248–49.

Yet energy officials from the Department of Transportation stressed at a 1982 meeting of agency energy representatives that unless a line item is provided for retrofit projects, "very few retrofit projects will survive." [107]

Moreover, the Subcommittee is concerned that OMB has not assured that the benefits of energy conservation investments are maximized and that funds for energy conservation projects are directed to the most cost-effective projects government-wide. Under current budget practices, projects with high returns on investment in one agency may be eliminated while projects with lower returns are retained in another agency. Unlike effective corporate energy managers, OMB officials have not established an investment framework which sets forth hurdle rates for conservation investments.[108]

In comparison, the energy manager of a major U.S. corporation has argued that investment guidelines for energy conservation investments are an essential element of a successful energy conservation program. He has stressed that:

> * * * A successful energy conservation program must include project planning and implementation at each level of management responsibility. This particularly applies to capital improvements where energy efficiencies will be improved through an investment in improved technology. Within Kaiser Aluminum budgets are set up for each level of management approval and a system is established for the evaluation and approval of projects. Guidelines are developed which outline how the return on investment and project payout will be calculated and what hurdle rates should be applied. If a plant manager had a project that did not meet the guideline return on investment, he would be instructed that he should not proceed even though he may have money in his budget. The investment guidelines, therefore, help to insure that capital funds are being allocated to the best opportunities. A parallel system could operate within the Federal government and within the different agencies.[109]

OMB has not only failed to exert leadership in the area of Federal energy conservation itself. The agency has also actively supported the dismantlement of the Federal Energy Management Program, the only program which currently exists to encourage government-wide energy conservation efforts.

In his letter to the Subcommittee on March 18, 1982, OMB Director David Stockman responded to the Subcommittee's inquiry about the future of the Federal Energy Management Program. In this letter, he emphasized that:

> The FEMP as a centralized effort to oversee and govern agency conservation efforts would be discontinued in FY 1983. Energy prices and Administration efforts to reduce spending government-wide provide sufficient incentive for agency officials and OMB to develop and implement plans to use energy more efficiently. The number of programs with

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[107] 656 Committee Meeting, supra note 72.
[108] Hearings, supra note 2, p. 42.
[109] Ibid., p. 50.

> potential for undertaking energy conservation efforts, the number of factors that must be considered in determining the appropriate funding level for any such initiative, and the limited time and staff resources available for preparing and reviewing such proposals have made it impossible for the Department of Energy to develop effective, uniform governmentwide requirements and procedures for energy conservation.[110]

Similarly, a DOE memorandum of August 1981 underscores OMB's lack of support for the Federal Energy Management Program. In this memorandum, the Director of DOE's Division of Federal and Community Programs, Mr. Gerald S. Leighton, summarized a meeting with Mr. Roy Niemela, Chief of OMB's Energy Conservation and Regulation Branch. Mr. Leighton states:

> Met with Niemela on this date to ascertain future of FEMP effort. My meeting followed Niemela's meeting with Budget Director, David Stockman.
>
> At this time the feeling of OMB is that FEMP should go away as a program in the Federal structure. There should be no money spent on the FEMP overall management effort; a regulatory environment should not be created internal to the Feds.[111]

At the Subcommittee's hearing, the Director of the Energy and Minerals Division of the General Accounting Office, Mr. J. Dexter Peach, expressed great concern about the OMB attitude highlighted by Mr. Leighton's memo. Mr. Peach argued that he did not agree that the establishment of a strong thrust for energy conservation within the Federal government created a "regulatory environment." [112] Rather, he stressed that even corporate energy managers recognize the need for centralized management efforts in coordinating the conservation initiatives of lower-level units, such as individual plants and divisions. Mr. Peach emphasized that corporate officials view top-management conservation initiatives as a "sensible way to . . . save money . . . [and] reduce costs." [113]

However, DOE and OMB have recommended that American taxpayers rely totally on the conservation initiatives of individual agencies without any meaningful oversight from DOE, OMB, or elsewhere in Fiscal Year 1983.[114] Unless this short-sighted policy is reversed, it is likely that future progress in Federal energy conservation will be jeopardized. Energy will simply not manage itself.

D. SETBACKS IN AGENCY CONSERVATION PROGRAMS

1. Recent Trends in Federal Energy Use

Signals of a weakened commitment to Federal energy conservation come at a time when Federal energy use is increasing. During Fiscal Year 1981, consumption of energy by Federal agencies increased by 3.4

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[110] Ibid., p. 260.
[111] Ibid., p. 35.
[112] Ibid.
[113] Ibid.
[114] DOE Congressional Briefing, supra note 62.

percent over Fiscal Year 1980 levels.[115] This overall trend was driven primarily by significant increases in fuel consumption by the Department of Defense.[116]

The energy conservation performance of the nine other major energy-using agencies was mixed. For example, the U.S. Postal Service, which has made substantial strides in Federal energy conservation since 1975,[117] continued to demonstrate significant reductions in energy use in Fiscal Year 1981. Between Fiscal Year 1980 and Fiscal Year 1981, the Postal Service succeeded in reducing its energy consumption in buildings by 4.9 percent per gross square foot.[118] During this period, the Postal Service also demonstrated progress in reducing energy consumption in its fleet of over 120,000 vehicles, reducing its energy use in this sector by 2.0 percent.[119]

Energy experts contend that the progress achieved in energy conservation by the Postal Service during Fiscal Year 1981 should be credited to the strong leadership of the Postmaster General, William F. Bolger, and the effective energy management systems which the Postal Service has instituted since Mr. Bolger's accession to the agency's top position in 1978.[120] According to Postal Service representatives, Mr. Bolger has strongly advocated energy conservation initiatives throughout his tenure at the Postal Service and continued his support unabated throughout 1981 and 1982, discussing energy management issues at virtually every meeting with Postal Service executives.[121] In addition, Postal Service conservation initiatives are supported by a strong energy management structure; the agency's Energy Committee, established in 1979, and the agency's energy coordinator report directly to the Deputy Postmaster General.[122] Moreover, this management commitment extends throughout the agency because energy conservation performance is an element of every manager's merit performance rating.[123] Such evaluation is facilitated by the development of a computerized information system to track energy consumption and the establishment of annual energy reduction goals throughout the Postal Service.[124]

On the other hand, agencies such as the Department of Transportation and the Department of Health and Human Services, which have lagged behind in reducing their energy use since Fiscal Year 1975,[125] showed evidence that their laxity increased in Fiscal Year 1981.[126] It is noteworthy that at the Department of Transportation, where building energy usage surged 8.3 percent between Fiscal Years 1980 and

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[115] DOE Data Letter II, supra note 1. This figure is 2.0 percent if fuel use by the Military Sealift Command Chartered Fleet in Fiscal Year 1981 is excluded from consideration. According to the Defense Department, fuel consumption by this fleet was not reported in Fiscal Year 1980 but was reported in Fiscal Year 1981. Hearings, supra note 2, p. 164.

[116] DOE Data Letter II, supra note 1.

[117] 1980 FEMP Annual Report, supra note 6, pp. 8–8, 8–16.

[118] Telephone Interview with Fred J. DiLisio, Special Assistant to the Deputy Postmaster General, U.S. Postal Service, April 9, 1982 (hereinafter cited as DiLisio Interview); DOE Data Letter II, supra note 1.

[119] DOE Data Letter II, supra note 1.

[120] DiLisio Interview, supra note 118.

[121] Ibid.

[122] Address by Fred J. DiLisio, 9th Energy Technology Conference, February 1982 (hereinafter cited as Energy Technology Conference); United States Postal Service, Energy Management Program, May 1980.

[123] DiLisio Interview, supra note 118.

[124] Ibid.

[125] 1980 FEMP Annual Report, supra note 6, pp. 8–8, 8–16.

[126] DOE Data Letter II, supra note 1.

1981, agency officials indicated that "upper management is letting the [energy conservation] program die on the vine." [127] Similarly, at the Department of Health and Human Services, where building energy use skyrocketed 12.2 percent between Fiscal Years 1980 and 1981, energy officials emphasized "the [energy conservation] program will be weakening until there is something from the Administration." [128]

2. Department of Defense: A Paper Tiger on Energy Conservation

a. Introduction.—The Department of Defense (DOD) is "the single largest energy consumer in the United States," accounting for roughly two percent of total national energy consumption.[129] In Fiscal Year 1981, the Department's energy bill exceeded $10.7 billion and accounted for 6.6 percent of the DOD budget.[130]

Even though the Department's energy consumption has declined since Fiscal Year 1975, energy price increases have consistently outpaced energy savings.[131] As a result, DOD officials have expressed concern that escalating energy costs will absorb an increasing proportion of their budget, diverting funds from projects necessary to maintain operational readiness.[132] For example, the Air Force Energy Plan emphasizes that:

> The Air Force's total energy costs, * * * in 1980 dollars, are expected to more than double between FY 1980 and FY 2000, increasing from about $4.5 billion to $9.3 billion. Using an average inflation rate of 10.5 percent per year, energy costs would be $33 billion by FY 2000, over seven times greater than in FY 1980.
>
> The cost of energy as a percent of the total Air Force budget also is likely to increase * * * Energy costs, although remaining relatively constant from FY 1975 through FY 1979, jumped from 6.3 percent of the total budget in FY 1979 to 11.3 percent in FY 1980.
>
> Overall, increasing energy costs requiring increasingly larger proportions of the total Air Force budget could seriously affect the Air Force's ability to maintain operational readiness. As more dollars have to be spent for energy, relatively fewer dollars will be available for the Air Force to carry out its essential mission.[133]

Yet the Subcommittee's investigation has revealed that DOD's energy conservation program has suffered serious setbacks in Fiscal Year 1981. During this period, energy conservation progress in DOD buildings slowed to a virtual standstill.[134] In addition, consumption levels

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[127] DOE Data Letter II, supra note 1; Energy Coordinators' Meeting, supra note 59.
[128] Ibid.
[129] Hearings, supra note 2, p. 63. The Department of Defense consumed 1.456 Quads (10^{15} Btus) of energy in Fiscal Year 1981 while national energy consumption equaled 7.06 Quads. DOE Data Letter II, supra note 1.
[130] Hearings, supra note 2, p. 235.
[131] 1981 Defense Energy Management Plan, supra note 8, p. I–6.
[132] U.S. Department of the Navy, Navy Energy Office, Energy Plan for FY 1982 (Washington, D.C., September 1981), pp. iii, 1.
[133] U.S. Department of the Air Force, Air Force Energy Office, Air Force Energy Plan (Washington, D.C., January 1981), p. 27.
[134] Hearings, supra note 2, p. 241; U.S., Department of the Navy, Naval Facilities Engineering Command, Energy Matters Newsletter (Port Hueneme, California, December 1981), p. 2. (hereinafter cited as December 1981 Energy Matters Newsletter).

for mobility fuels—fuels used in aircraft, ships, and ground operations—exceeded Fiscal Year 1975 levels, violating the Department's internal conservation goals for the first time.[135] As a result of these trends and increased fuel costs, DOD's energy bill skyrocketed $1.5 billion between Fiscal Years 1980 and 1981, a 17 percent increase.[136] Future progress is also threatened because the Department has weakened its energy conservation management structure [137] and because the Administration plans to eliminate mechanisms to provide for executive branch scrutiny of DOD conservation efforts.[138]

b. DOD Portrays Its Energy Program As An Aggressive Enemy of Energy Waste.—At the Subcommittee's hearing on October 23, 1981, Mr. George Marienthal, former Principal Director for Logistics and Materiel Management in the Office of the Secretary of Defense, presented testimony describing the status of DOD's energy conservation program. In both his testimony and his responses to Subcommittee questions, Mr. Marienthal painted an extremely rosy picture of the Department's progress in reducing energy consumption. Mr. Marienthal portrayed DOD as an aggressive enemy of energy waste asserting that:

> 1. "We are doing a very good job, in our opinion, of conserving energy. * * * We are ahead of the glidepath to meet new and existing building energy conservation goals." [139]
>
> 2. "Our major mobility energy conservation and efficiency goal is to hold the use of energy in mobility operations to the FY 1975 level of consumption through 1985. This goal has thus far been obtained." [140]
>
> 3. "DOD has been the recognized leader in the Federal government's efforts to reduce its energy consumption * * * I would claim we are a leader in the United States comparable to any firm in the private sector, without question, both in processes and in end results, and the evidence is clear on that." [141]
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> 4. "Since its inception in 1976, we have invested $1 billion in ECIP [DOD's Energy Conservation Investment Program] and have realized an average amortization of less than five years." [142]
>
> 5. Since 1976, DOD has spent approximately $150 million on computerized Energy Monitoring and Control Systems. "They all have an average payback of less than five years." [143]
>
> 6. "The Department of Defense and its poor civilian employees and military employees deserve a tremendous amount of praise from the Energy Committee for having run a successful energy conservation program as shown over the past half-decade-plus." [144]

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[135] Hearings, supra note 2, p. 237.
[136] Ibid., p. 235.
[137] Ibid., p. 6.
[138] Ibid., p. 260.
[139] Ibid., pp. 76, 119.
[140] Ibid., p. 66.
[141] Ibid., pp. 59, 65.
[142] Ibid., p. 70.
[143] Ibid., p. 78.
[144] Ibid., p. 159.

c. False Promises by DOD Do Not Save Energy.—Based on an extensive investigation of DOD's energy conservation program,[145] we cannot endorse the contention that the Department's energy conservation program merits tremendous praise from the Congress. Rather, we believe that DOD is subject to criticism because of its uneven track record in the area of energy conservation. Although some military commands and installations have achieved substantial reductions in energy use since the mid-1970's, many commands and installations continue to practice wasteful energy habits which burden the Federal Treasury.[146] For example, several major audit reports reveal that low-cost and no-cost conservation measures, offering potential savings of millions of dollars, have been neglected at many DOD installations.[147] One audit concluded that several million dollars could be saved simply by reducing water heater temperature settings.[148] Another audit uncovered an Army installation where 48 percent of the exterior building lights were on during daylight hours.[149]

Moreover, we are extremely concerned that many of the assertions by DOD officials at the Subcommittee's hearing about the status of the Department's conservation program cannot be substantiated. For example, Mr. Marienthal's first major assertion, that DOD is "ahead of the glidepath" in achieving energy conservation goals for new buildings, is not based on "real world" data.

DOD conservation goals for new buildings require a 45 percent reduction in energy usage per square foot of building space from 1975 usage levels.[150] Yet, an audit report issued by the Army Audit Service reveals that the Army's compliance with the 45 percent standard is premised solely on computer simulations.[151] The audit report emphasizes that "the computer simulation . . . had never been field tested against actual data.[152] Moreover, the report stresses that "in a separate study of modular barracks, actual energy consumption for space heating was as much as six times higher than the computer simulation studies indicated." [153]

DOD's testimony also emphasized that the Department was "ahead of the glidepath" in achieving energy conservation goals for existing buildings.[154] These goals require a 20 percent reduction in energy consumption per square foot from 1975 usage levels.[155] DOD officials

[145] During the course of our investigation, we reviewed hundreds of pages of documents concerning DOD's energy conservation program, including numerous internal memoranda and audit reports. Hearings, supra note 2, p. 77. We also received testimony from DOD witnesses at our hearing on October 23, 1981 and engaged in extensive correspondence with the Defense Department following our hearing. Hearings, supra note 2, pp. 60–90, 165–243.

[146] Military Family Housing Audit, supra note 37; Army Energy Program Audit, supra note 38; U.S. Department of Defense, Defense Audit Service, Report on the Review of Energy Conservation at DOD Installations, November 1980 (hereinafter cited as DOD Installations Audit); U.S., Department of the Army, Army Audit Agency, Audit of the Army Energy Program U.S. Army, Europe and Seventh Army, April 1980; Memorandum from Captain Robert E. Mumford, Jr., Assistant for Energy Conservation, Office of the Secretary of Defense, to George Marienthal, Deputy Assistant Secretary of Defense for Energy, Environment, and Safety, May 27, 1981 (hereinafter cited as May 1981 Audit Report); Robert E. Mumford, Jr., "Managing People for Energy Conservation," Defense Management Journal, Vol. 17, No. 3 (Third Quarter 1981).

[147] Ibid.

[148] Military Family Housing Audit, supra note 37, p. 18. See also, Army Energy Program Audit, supra note 38, p. 9.

[149] Army Energy Program Audit, supra note 38, p. 9.

[150] 1981 Defense Energy Management Plan, supra note 8, p. III–18.

[151] Army Energy Program Audit, supra note 39, p. 22.

[152] Ibid.

[153] Ibid.

[154] Hearings, supra note 2, p. 119.

[155] 1981 Defense Energy Management Plan, supra note 8, p. III–17.

stated that "Since Fiscal Year 1975, DOD installation energy consumption has declined approximately 15 percent per square foot." [156]

Although DOD contended to the Subcommittee that it was "ahead of the glidepath" in meeting its building energy conservation goals, it appears that some of the military services may actually be on a "crash course" which will cause them to glide down short of the runway. For example, a December 1981 newsletter of the Naval Facilities Engineering Command expressed concern that "the Navy enters FY 82 approximately two years behind its timetable for reducing [building] energy consumption." [157]

While the Navy may be able to correct its course because of its frank admission of its problems, the Subcommittee is even more concerned about the course of the Army's energy conservation program. The Army touts its energy program as "vigorous" and argues that it has met all "program objectives." [158] However, in fact, audit reports suggest that the Army's energy conservation program is weak and that the Army's asserted compliance with program objectives is misleading.

According to an independent audit report, over 70 percent of the energy savings in buildings achieved by the Army between Fiscal Years 1975 and 1980 [159] can be attributed to a reduction in workload at Army ammunition plants following the expiration of Vietnam War procurement contracts rather than improvements in energy efficiency.[160] "These savings are fragile because they reflect an idle industrial base instead of permanently increased efficiency in facilities operations." [161] Although the Army asserts in its 1981 Energy Plan that it has achieved a 16.9 percent reduction in energy use per square foot in existing facilities between Fiscal Years 1975 and 1980,[162] this figure is reduced to 7.7 percent if the ammunition plants, Army National Guard units, and Civil Works facilities of the Corps of Engineers are removed from consideration.

Moreover, DOD's testimony failed to note that any "glidepath" which might have existed in the past had clearly been jolted by a large updraft in Fiscal Year 1981. According to DOD's own figures, progress in reducing building energy consumption in DOD buildings slowed to a virtual standstill in Fiscal Year 1981; energy efficiency improved only 0.7 percent between Fiscal Years 1980 and 1981.

Increased consumption of electricity in DOD facilities was largely responsible for the Department's poor performance in building energy conservation in Fiscal Year 1981. Usage of this expensive energy source increased nearly two percent in DOD between Fiscal Years 1980 and 1981, and in the Army, consumption jumped by 3.25 percent.[163] As a result of the increased usage of electricity and other fuels and the increasing cost of these fuels, DOD's energy bill for facilities leaped by

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[156] Hearings, supra note 2, p. 76.
[157] December 1981 Energy Matters Newsletter, supra note 134, p. 1.
[158] U.S., Department of the Army, Army Energy Plan, August 1981, pp. 4–8 (hereinafter cited as Army Energy Plan).
[159] 13.91 of the 19.56 trillion British thermal units reduction.
[160] U.S., Department of Energy, Army Energy Data Analysis, June 1981, pp. 8, 11 (hereinafter cited as Army Energy Data Analysis); Army Energy Program Audit, supra note 39, p. 36. It should be noted that the 70 percent estimate is based on data from the "Facilities Engineering Annual Summary of Operations". In contrast to the Defense Energy Information System, this report does not include energy consumption by the Army National Guard and the civil works activities of the Corps of Engineers. If consumption from these two sources is considered, the percentage estimate is reduced to 40 percent.
[161] Army Energy Data Analysis, supra note 160, p. 8.
[162] Army Energy Plan, supra note 158, p. 4–2.
[163] Hearings, supra note 2, p. 199.

$533 million between Fiscal Years 1980 and 1981, nearly a 24 percent increase.[164]

Several of the military services have expressed concern in their internal communications about the slowdown in building energy conservation in Fiscal Year 1981. For example, Mr. Tidal W. McCoy, Assistant Secretary of the Air Force for Manpower, Reserve Affairs, and Installations, emphasized in a January 1982 memorandum on installation energy goals that:

> I recognize the considerable efforts that the Air Force has made to date in these areas, but cannot help but be concerned that the emphasis on this area has diminished in view of annual conservation savings of less than 2 percent for 1981.[165]

In fact, energy consumption in Air Force installations was reduced by only one percent per square foot between Fiscal Years 1980 and 1981. While the Subcommittee recognizes that the initial improvements in energy efficiency are the easiest to achieve, the building conservation record of the Air Force in Fiscal Year 1981 was the worst record in six years.

Similarly, in December 1981 the Navy's "Energy Matters Newsletter" underscored the fact that the Navy had shown no improvement in building energy conservation between Fiscal Years 1980 and 1981.[166] In fact, a conservation "box score" in the newsletter disclosed that the Navy had missed its goal of a two percent reduction in annual energy use and had instead increased its consumption per square foot by 0.05 percent during this period.[167]

Moreover, the Subcommittee believes that DOD's overall estimate of a 15 percent reduction in energy use per square foot between Fiscal Years 1975 and 1981 [168] requires careful scrutiny. Just seven months before the Subcommittee's hearing, DOD noted in its "Defense Energy Management Plan" that the Department had reduced its energy consumption by only 8,451 British thermal units per square foot between Fiscal Years 1975 and 1979, a 3 percent improvement.[169] In a March 1982 letter to the Subcommittee, DOD officials further asserted that energy consumption per square foot decreased only 0.7 percent between Fiscal Years 1980 and 1981.[170] Thus, in order to achieve a 15 percent reduction between Fiscal Years 1975 and 1981, DOD would either have had to revise dramatically its building inventory or energy usage figures or achieve over an 11 percent improvement in its energy efficiency between Fiscal Years 1979 and 1980.[171] Such an improvement

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[164] DOE Data Letter II, supra note 1.

[165] Memorandum from Mr. Tidal W. McCoy, Assistant Secretary of the Air Force for Manpower, Reserve Affairs, and Installations, to the Deputy Chief of Staff for Logistics and Engineering, January 28, 1982 (hereinafter cited as McCoy Memorandum).

[166] December 1981 Energy Matters Newsletter, supra note 134, p. 2.

[167] Ibid.

[168] Hearings, supra note 2, pp. 76, 241.

[169] 1981 Defense Energy Management Plan, supra note 8, p. III-18. See also U.S. Department of Defense, Directorate for Energy Policy, Department of Defense Ten-Year Building Plan, June 3, 1980, p. 19 (hereinafter cited as DOD Ten-Year Plan).

[170] Hearings, supra note 2, p. 241.

[171] In an April 22, 1982 interview with Subcommittee staff, DOD officials argued that the estimate of a 15 percent reduction in building energy use per gross square foot between Fiscal Years 1975 and 1981 could be reconciled with data presented in the Defense Energy Management Plan by accounting for changes in the treatment of "cold iron", in-port ships using on-shore power. Mr. Edward Dyckman of the Defense Energy Office explained that DOD had revised its methodology for computing Department-wide building energy consumption in the fall of 1981 to delete "cold iron" energy usage data. This data had been considered in computing DOD energy consumption since Fiscal Year 1975 but DOD officials now argued that it was inappropriate to include "cold iron" in building energy usage statistics because it represents energy usage aboard ships.

The deletion of "cold iron" energy data definitely serves to improve DOD's energy conservation record between Fiscal Years 1975 and 1981 because "cold iron" usage increased

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would have been far in excess of the average rate of progress during the previous 4-year period.

Mr. Marienthal's second major assertion at the Subcommittee's hearing also cannot be substantiated. At the hearing, he emphasized that:

> Our major mobility energy conservation and efficiency goal is to hold the use of energy in mobility operations to the FY 1975 level of consumption through 1985. This goal has thus far been obtained.[172]

Mr. Marienthal failed to raise any warning signs that the Department was veering dangerously from a path of continued compliance with its energy conservation goals for mobility fuels.

Yet, the Subcommittee learned subsequently that at the time of the Subcommittee's hearing the Department of Defense had already failed to achieve its energy conservation targets for mobility fuels for the first time. According to a March 1982 letter from Departmental representatives, DOD mobility fuel consumption jumped above the Fiscal Year 1975 guideline level of 153.6 million barrels to 158.9 million barrels in Fiscal Year 1981.[173] It is significant that mobility fuel consumption had consistently remained below 150 million barrels for the five-year period between Fiscal Year 1976 and Fiscal Year 1980.[174]

The Subcommittee is extremely concerned about DOD's failure to meet its mobility energy conservation goals. DOD's energy bill for mobility fuels increased by nearly one billion dollars between Fiscal Years 1980 and 1981.[175] If the current upward trend in mobility fuel

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during this period by 2.3 trillion British thermal units. However, this change is not large enough alone to explain the discrepancy between the Defense Energy Management Plan of March 1981 and Mr. George Marienthal's testimony of October 1981.

Therefore, the Subcommittee believes that several additional factors should be analyzed by independent auditors to determine the validity of DOD's 15 percent reduction estimate. First, DOD's building inventory estimates should be reviewed carefully because it appears that the gross square footage data for Fiscal Years 1975 and 1980 which the Department submitted to the Subcommittee in March 1982 (Hearings, supra note 2, p. 241) may have been revised substantially from earlier submissions to the Department. DOD Ten-Year Plan, supra note 169, p. 19; 1981 Defense Energy Management Plan, supra note 8, pp. III–17–18; 1980 FEMP Annual Report, supra note 6, pp. 8–8; U.S. Department of Energy, Federal Energy Management Program, Report to the Congress on the Results of Preliminary Energy Audits—Appendix II, October 1980, pp. 24–28; Letter from George Marienthal, Deputy Assistant Secretary of Defense for Energy, Environment, and Safety to John M. Deutch, Under Secretary of Energy, March 21, 1980. The Subcommittee is extremely concerned about the accuracy of DOD's building inventory data because the Department itself admits that it has failed to complete a validation study of this data. Hearings, supra note 2, p. 173. The Department's former Assistant for Conservation has also expressed concern about the reliability of square footage records. May 1981 Audit Report, supra note 146, p.4.

Second, DOD's energy consumption data should be reviewed to determine whether inappropriate revisions are responsible for the substantial improvement in DOD's energy conservation record reported by Mr. Marienthal. Throughout our investigation of the Department's energy usage data, we have expressed serious questions about the credibility of data officially reported by DOD to DOE. Hearings, supra note 2, pp. 165–66.

However, it is also possible that DOD's alleged progress in Fiscal Year 1980 may represent real and substantial gains in energy efficiency spurred by pressure from President Carter and Secretary of Defense Harold Brown. During this period, which followed the Iranian oil crisis, President Carter issued several stringent executive directives and even threatened that he would recommend deferral or rescission of funds as a means of guaranteeing compliance with his energy conservation goals.

[172] Hearings, supra note 2, p. 66.

[173] Hearings, supra note 2, p. 237. The Fiscal Year 1981 consumption level is 154.4 million barrels if fuel use by the Military Sealift Command Chartered Fleet is excluded from consideration. Fuel consumption from this fleet was not reported to the Defense Energy Information System in Fiscal Year 1975. However, even if this correction is made, DOD mobility fuel consumption in Fiscal Year 1981 still exceeded the Fiscal Year 1975 guideline level.

[174] Hearings, supra note 2, p. 237.

[175] Hearings, supra note 2, p. 236; DOE Data Letter II, supra note 1.

consumption continues, the budgetary implications are enormous.

In Fiscal Year 1981, DOD spent approximately $8 bililon for mobility fuels.[176] Thus, just a one percent increase in energy consumption imposes an additional $80 million burden on American taxpayers.

At the Subcommittee's hearing, DOD witnesses contended that the surge in mobility fuel consumption in Fiscal Year 1981 was "absolutely related to" increased military readiness rather than reduced energy conservation efforts.[177] The Subcommittee agrees that at least some of the increase in consumption in Fiscal Year 1981 was related to increases in aircraft flying hours, ship steaming hours, and training exercises. However, we believe that the Department has failed to demonstrate that reductions in energy conservation efforts did not contribute to this surge in mobility fuel consumption.

In view of the substantial taxpayer dollars involved, the Subcommittee believes that DOD should promptly evaluate recent increases in mobility fuel consumption and develop strategies to stem unnecessary fuel use. In pursuing this objective, we believe that the comparative performance of the Army, Navy, Air Force, and Marines deserves careful scrutiny. For example, it is noteworthy that every military service except the Army succeeded in reducing its consumption of automotive fuels between Fiscal Years 1980 and 1981.[178] While the Navy, Air Force, and Marines reduced their consumption of automotive fuels by three to five percent during this period, consumption by the Army increased by over one-half of one percent.[179]

The third major assertion put forth by Mr. George Marienthal at the Subcommittee's October 23rd hearing was that DOD was the leader in energy conservation in both the private and public sectors. At the hearing, Mr. Marienthal emphasized that:

> DOD has been the recognized leader in the Federal government's efforts to reduce its energy consumption * * * I would claim we are a leader in the United States comparable to any firm in the private sector, without question, both in processes and in end results, and the evidence is clear on that.[180]

Unfortunately, it appears that DOD has no data to support Mr. Marienthal's assertion. According to IBM's energy conservation manager, Mr. Kenneth Ellis, the only fair means of testing Mr. Marienthal's assertion would be to compare energy consumption performance per square foot in a specific category of DOD buildings (e.g. office buildings, hospitals, family housing) with the performance of another Federal agency or private company in the same building category.[181] However, energy officials at the Defense Department concede that DOD has not performed this type of detailed analysis of its buildings.[182] According to William J. Sharkey, DOD's Director of Energy Policy, the only energy consumption performance data which the Department

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[176] Ibid.
[177] Hearings, supra note 2, p. 159.
[178] Hearings, supra note 2, pp. 210–14.
[179] Ibid.
[180] Ibid., pp. 59–65.
[181] Telephone Interview with Kenneth Ellis, Energy Conservation Program Manager, International Business Machines Corporation, April 1982.
[182] Staff interview with William J. Sharkey, Director for Energy Policy, Office of the Secretary of Defense, April 22, 1982 (hereinafter cited as Sharkey Interview).

possesses is based on "spot checks or engineering estimates because of the lack of meters." [183]

Even the information which is available about DOD energy performance is inconsistent with the assertion that DOD is the Nation's leader in energy conservation. According to the Annual Report on Federal Government Energy Management for Fiscal Year 1980, the Department of Defense is ranked seventh among the top ten energy-using agencies in building energy conservation between Fiscal Years 1975 and 1980.[184] According to this report, building energy reductions per square foot by the Postal Service and the National Aeronautics and Space Administration were approximately double that of DOD.[185]

The fourth major assertion by DOD officials at the Subcommittee's hearing was that projects in DOD's Energy Conservation Investment Program (ECIP) "have realized an average amortization of less than five years." [186] This average payback estimate is consistent with similar statements provided by DOD to the Subcommittee on Military Construction of the House Appropriations Committee.[187] However, unfortunately DOD has not developed actual data to support its assertion. Rather, the payback estimate is based on engineering estimates and not on actual data. According to a June 1981 report:

> The results of the ECIP are difficult, if not impossible, to accurately measure because of a lack of utility consumption meters on individual buildings. Consequently, there are no individual 'before and after' data to prove the benefits of these retrofit projects and confirm the design estimates of their anticipated savings.[188]

More recently, the General Accounting Office added its voice to the chorus of criticism relating to DOD's Energy Conservation Investment Program. In a January 1982 audit report, GAO emphasized that DOD "does not have an adequate method of . . . identifying energy savings resulting from completed ECIP projects." [189] GAO stressed that "little progress has been made" since the Defense Audit Service highlighted this problem in February 1979.[190] DOD's own Defense Energy Management Plan concedes that:

> * * * Overall energy savings cannot be attributed to any specific project, nor to individual buildings, because less than 1 percent of DOD buildings are individually metered * * * [191]

DOD's engineering estimates have been questioned even in subsequent audits based on engineering calculations. For example, in a major review of ECIP projects installed at family housing and reserve facilities, DOD auditors emphasized that:

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[183] Ibid.
[184] 1980 FEMP Annual Report, supra note 6, p. 8–8.
[185] Ibid.
[186] Ibid., p. 78.
[187] U.S., Congress, House, Committee on Appropriations, Military Construction Appropriations for 1982, Hearings before the Subcommittee on Military Construction, House of Representatives, 97th Cong., 1st Sess., 1981, p. 735.
[188] Army Energy Data Analysis, supra note 160, p. 8.
[189] Letter from Charles A. Bowsher, Comptroller General of the United States, to Bo Ginn, Chairman of the Subcommittee on Military Construction, January 13, 1982, pp. 2, 9.
[190] Ibid., p. 7.
[191] 1981 Defense Energy Management Plan, supra note 8, p. III–20.

> Sixteen projects valued at $7.8 million were supported at least, in part, by faulty calculations and assumptions that overstated energy savings and understated payback periods. For example, * * * at Fort Richardson, set-back thermostats were installed to save heat energy. Payback was to have been 2.6 years. We recomputed the payback period and found it to be closer to 26 years * * *.[192]

DOD's failure to validate actual savings derived from ECIP projects is totally unacceptable in view of expenditures of $1 billion in this program. This deficiency is particularly troubling in view of a recent report by the Office of Technology Assessment (OTA) which concludes that actual savings often vary considerably from predicted savings in energy retrofit projects.[193] According to this report, in the biggest survey of energy retrofits conducted to date, actual savings ranged from 80 percent less than predicted to 50 percent more than predicted.[194]

The lack of validation of energy savings estimates in the Department's $150 million program to install computerized Energy Monitoring and Control Systems (EMCS) is equally disturbing. Although nearly 150 systems have been installed, DOD has conceded that not a single validation study has been completed.[195] In a March 1982 letter to the Subcommittee, DOD's Assistant Secretary for Logistics and Materiel Management admitted that:

> The Army and the Air Force have performed no EMCS validation studies. The Navy has selected PMTC Pt. Mugu, CA, and NAVAMPHIBASE Little Creek, VA, for EMCS validation. At PMTC Pt. Mugu, the first efforts at metering were ineffective due to insufficient and poorly rated metering equipment. The problems have been resolved and installation of meters is proceeding. At NAVAMPHIBASE Little Creek, the contractor is installing metering equipment.[196]

d. DOD's Top Management Neglects Energy Conservation.—The Subcommittee is not only concerned about DOD's reluctance to report openly and objectively to the Congress about the Department's energy usage trends. We are also concerned that the complacent attitude of DOD officials has delayed constructive and aggressive action within the Department to stem increased energy use. In fact, it appears that the complacency of top-level DOD officials may have contributed to the upward trend in DOD energy usage in 1981.

Throughout 1981, top-level DOD officials evidenced a "benign neglect" of energy conservation matters. Neither the Secretary of Defense nor his Assistant Secretary for Manpower, Reserve Affairs, and Logistics issued a single statement to the heads of the military services emphasizing the importance of an aggressive energy conservation pro-

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[192] U.S., Department of Defense, Defense Audit Service, Report on the Audit of the DOD Energy Conservation Investment Program for Family Housing and Reserve Component Facilities, March 1980, pp. 2–4.
[193] U.S., Congress, Office of Technology Assessment, Energy Efficiency of Buildings in Cities (Washington, D.C.: Government Printing Office, 1982), pp. 84–85, 132.
[194] Ibid.
[195] Hearings, supra note 2, p. 176.
[196] Ibid.

gram.[197] This silence tended to reinforce the "anti-conservation" signals which had been generated by the President, DOE, and OMB.

At the Subcommittee's hearing on October 23, 1981, a representative of the General Accounting Office specifically expressed concern about the de-emphasis of energy conservation at the Department of Defense in 1981.[198] He emphasized that:

> DOD management support for conservation appears to be declining as evidenced by recent changes in Defense organizational structure. For example, the visibility of an energy function, including conservation, at the deputy assistant secretary level has recently been reduced. More specifically, DOD had a Deputy Assistant Secretary for Energy, Environment, and Safety. Following a recent organizational change, that position was abolished and its functions combined with another deputy assistant secretary's functions.
>
> Also, an energy conservation officer position within the DOD Directorate of Energy Policy has been vacant since July 1, 1981 with no decision made about filling this position.
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> * * * * * * *
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> We believe the above situations are symptomatic of a decline in a commitment to aggressively promote energy efficiency. This lack of commitment is also evident by the increases in DOD energy use.[199]

Administration statements supporting a free market approach to energy conservation have also been interpreted by some DOD officials as an endorsement of a "hands-off" approach to energy management. A vivid example of this problem is found in a Defense Energy Program Policy Memorandum cancelling DOD's mandatory program for Driver Energy Conservation Awareness Training (DECAT).[200] In this June 1981 memorandum, Mr. George Marienthal stressed that the mandatory program had been cancelled because "[t]he thrust of the new administration is to concentrate on market forces to achieve goals."[201] He argued that in the case of motor gasoline, "the budget process will require stringent measures to be fuel efficient."[202]

At the Subcommittee's hearing, Chairman Dingell strongly criticized the energy management philosophy embodied in the DOD memorandum.[203] Yet, Mr. Marienthal sought to defend this "laissez-faire" approach in the following colloquy:

> Mr. DINGELL. [t]he directive says as follows: "The thrust of the new administration is to concentrate on market forces to achieve goals."

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[197] In a letter of December 16, 1981, Chairman Dingell requested DOD to "provide copies of any public letters or statements since January 1981 by Secretary Weinberger, Assistant Secretary Korb, or Assistant Secretary Sherick concerning the Federal Energy Management Program or DOD energy conservation programs or policies." On March 5, 1982, Mr. R. D. Webster, Deputy Assistant Secretary of Defense for Logistics and Materiel Management responded that "In his Annual Report to Congress for fiscal year 1983, Secretary Weinberger discusses the importance of the Energy Conservation Program . . . In addition, energy conservation has been made a management improvement initiative of the DOD Council on Integrity and Management Improvement." However, neither of these examples represents a direct communication from a top-level DOD official to the heads of the military services.

[198] Hearings, supra note 2, p. 6.

[199] Ibid.

[200] Memorandum to the Special Assistants for Energy of the Military Services and the Directors of Defense Agencies from George Marienthal, Deputy Assistant Secretary of Defense for Energy, Environment, and Safety (Defense Energy Program Policy Memorandum 81–7), June 3, 1981.

[201] Ibid.

[202] Ibid., p. 2.

[203] Hearings, supra note 2, pp. 117–18, 162.

How do we expect market factors to work inside the Federal Government? If you have a government employee driving a vehicle, he doesn't care what gasoline costs if it is paid for by the taxpayer. He might care if he owned the vehicle or if he is paying the cost of the gasoline, but the market factor simply doesn't work on that fellow otherwise, does it?

Mr. MARIENTHAL. Yes, it absolutely does work on him. I have a great deal of difficulty understanding why this committee wouldn't realize the importance that market factors play. They play an important role in how the Department of Defense runs that business.

Mr. DINGELL. * * * How do market forces affect the driver of that vehicle? * * * He is driving a Government vehicle with Government gasoline. He drives it in the fashion that best suits him unless he is instructed otherwise. Market forces don't work on him at all, do they?

Mr. MARIENTHAL. I don't know that particular driver.

Mr. DINGELL. I don't know him either. But you name one driver driving a Government vehicle with Government gasoline and tell me how he is going to be affected by the market price of that gasoline.

Mr. MARIENTHAL. I can explain how the process works where market factors——

Mr. DINGELL. Would you do that after you answer the question?

Mr. MARIENTHAL. For that particular driver to be affected by market prices would require us to have imbued in him an awareness of how important energy conservation is. We believe we do have an energy awareness program that works successfully within the Department of Defense. He would adopt that energy conservation ethic in his daily work practice and thereby drive at the appropriate rate of speed to save energy. We have also adopted the essential elements of DECAT in our normal driver training programs.[204]

By early 1982, DOD energy officials began to recognize that the energy conservation program was slipping within the Department. At the same time, these officials realized that the Subcommittee did not intend to abandon its intensive review of DOD's energy conservation program following the conclusion of our October 23rd hearing. As a result of these pressures, DOD's Director for Energy Policy sought the support of Frank C. Carlucci, DOD's Deputy Secretary, to issue a memorandum in support of energy conservation to the heads of the various military departments. This memorandum, which was issued on March 16, 1982, stated as follows:

I would like to correct what seems to be a misunderstanding of Administration policy on energy conservation. This Administration has recognized that the free market, not the government, is the most effective inducer of energy conservation. Consequently, actions have been taken to reduce the Department of Energy budget, and ultimately to dismantle DoE. Some have misinterpreted these actions as a signal that the Administration is "anti-conservation." This is not true.

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[204] Ibid., pp. 117–18.

> We in the Department of Defense, as managers of public funds, have a responsibility to seek economies and efficiencies in all that we do. With our annual energy bill of $11 billion, we must practice energy conservation. Every one percent of the fuel bill we save through good management would procure, for example, three AH64 helicopters, two F14s, and two F16s.
>
> I urge you to promote energy conservation as a major priority. Enormous savings potential exists if energy conservation is pursued aggressively throughout the Department. We must all renew our efforts to save energy and, as a result, strengthen our defenses and our economy.[205]

In early 1982, the top-management of the Air Force also initiated action to reinvigorate its energy conservation program. In an action memorandum dated January 28, 1982, Mr. Tidal W. McCoy, Assistant Secretary of the Air Force for Manpower, Reserve Affairs, and Installations, initiated a thorough review of the service's installations energy goals in an effort "to stimulate further energy management initiatives." [206]

Although the Subcommittee commends the efforts of Messrs. Carlucci and McCoy to rehabilitate DOD's energy conservation program, we believe that the Department has failed to address comprehensively the problems threatening this program. For example, in a letter of March 5, 1982, DOD's Deputy Assistant Secretary of Defense for Logistics and Materiel Management, Mr. R. D. Webster conceded that the position of Assistant for Conservation within the DOD Directorate of Energy Policy continues to remain unfilled.[207] He indicated that "the responsibilities of that job have been delegated temporarily to other staff members within the Defense Energy Policy Office." [208]

Under the Department's present organizational structure, not a single individual in DOD headquarters is responsible for energy conservation matters on a full-time basis. Rather, energy conservation issues must compete with energy supply issues, energy technology issues, and other major energy issues for the time and attention of the members of the Defense Energy Policy Office. DOD officials have admitted that energy conservation is given a low priority under this approach. Certainly few corporate executives would find DOD's current energy management structure as a viable mechanism for managing an $11 billion dollar budget item.

In addition to its failure to assure a sound energy conservation management structure, DOD has continued to neglect many other deficiencies in its energy conservation program. First, the Department continues to rely on expensive ECIP and EMCS projects to meet its energy conservation goals while ignoring low-cost and no-cost conservation measures in many installations.[209] Even within ECIP, auditors have found that "projects with relatively low returns were being implemented before those with higher returns" in many cases.[210]

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[205] Carlucci Memorandum, supra note 31.
[206] McCoy Memorandum, supra note 165, p. 1.
[207] Hearings, supra note 2, p. 173.
[208] Ibid.
[209] May 1981 Audit Report, supra note 146, pp. 14, 19–20; DOD Installations Audit, supra note 146, pp. 19–21.
[210] Army Energy Program Audit, supra note 38.

Second, the lack of top-management support and deficiencies in the Department's management control systems impede effective energy management. According to a major audit report:

> The defense energy conservation program is not a high interest/high priority command item at most installations. Generally it has been fully delegated to the facilities engineer (in some cases even further down the chain) and often receives little attention from the installation commander.[211]

These problems are exacerbated by limited mechanisms to assure accountability. As a result of DOD's interminable delays in establishing a metering policy, management generally does not have enough data on patterns of energy consumption to develop, implement, direct, and control comprehensive building conservation programs.[212] Because of the lack of data, conscientious commanders cannot assign specific conservation goals below the installation level.[213] "Accountability is hidden within the aggregated data," and "it is impossible to distinguish between the responsible energy user and the wastrel."[214] The failure to monitor major tenant commands separately also serves to thwart responsible efforts to curtail wasteful energy usage patterns in DOD family housing.[215]

In addition, DOD has lagged in developing incentive systems to spur energy conservation. Energy conservation criteria are not separately considered in the performance evaluation of commanders.[216] In the absence of clear incentives for top-management to conserve energy, managers often simply rely on Congress to foot their increasing energy bills through supplemental appropriations.

Finally, it appears that DOD officials have failed to thoroughly evaluate the impact of the current defense build-up on energy costs. If the Department believes that it cannot achieve operational readiness within the current mobility conservation goals, it should offer alternative annual goals to the Congress and provide detailed strategies to achieve such goals. It is simply not sufficient for DOD to argue on the one hand that "energy is readiness" while attempting on the other hand to hide energy inefficiency under the guise of operational readiness.

3. Department of the Interior: Top-Level Officials Neglect Energy Conservation

The Department of the Interior charted an impressive energy conservation record during the 1970's, posting a 15.3 percent reduction in building energy use per gross square foot between Fiscal Year 1975 and Fiscal Year 1980.[217] At the close of the Carter Administration, the Department had the only Ten-Year Plan for Buildings Energy Conservation to be approved by the Department of Energy.[218] Moreover, by Fiscal Year 1981, the Department had made significant strides in

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[211] May 1981 Audit Report, supra note 146, p. 3.
[212] DOD Installations Audit, supra note 146, p. 16.
[213] Ibid.
[214] May 1981 Audit Report, supra note 146, p. 15.
[215] Military Family Housing Audit, supra note 38, pp. 6–8.
[216] Sharkey Interview, supra note 182. A July 1974 report of the Defense Energy Task Group recommended that energy conservation performance ratings be incorporated into existing officer evaluation systems. U.S., Department of Defense, Defense Energy Task Group, Management of Defense Energy Resources Phase II Report, July 22, 1974, pp. 6–14. However, this recommendation has never been implemented.
[217] 1980 FEMP Annual Report, supra note 6, p. 8–8.
[218] Hearings, supra note 2, p. 105.

building a strong energy management program and funding substantial energy conservation investments.

However, the Subcommittee's in-depth investigation of the Interior Department's Energy Conservation Program has revealed that the strong momentum in support of energy conservation previously established is being eroded severely. In early 1982, the Interior Department's Energy Conservation Program stood on the verge of collapse.

Throughout 1981, top-level Interior Department officials failed to provide any discernible support for energy conservation. In fact, in response to a January 4, 1982 letter to Secretary Watt requesting copies of memoranda concerning energy conservation issued to bureau heads by Secretary Watt, Under Secretary Donald P. Hodel, or Assistant Secretary Robinson West, Departmental representatives conceded that "none [have been] issued." [219]

The inaction by top-level Interior Department officials in the area of energy conservation conflicts with the intent of Section 656 of the DOE Organization Act.[220] In order to elevate the attention given to energy conservation matters, this provision requires each major energy-using agency to designate an Assistant Secretary as its principal energy conservation official and requires that this senior official be "principally responsible for planning and implementation of energy conservation programs." [221]

Although Mr. Robinson West, DOI's Assistant Secretary for Policy, Budget, and Administration, was designated as the Interior Department's principal energy conservation official in early 1981, Mr. West conceded in a March 1982 interview with Subcommittee staff that he had not participated in a single decision concerning the Interior Department's Energy Conservation Program.[222] In fact, Mr. West emphasized to Subcommittee representatives that "I haven't been active in this area. That must be clear." [223]

Mr. West also made it clear that Secretary Watt had not been active in the Department's Energy Conservation Program. According to Mr. West, the only time he had discussed in-house energy conservation with Secretary Watt was in the "general" context of discussions concerning the need to "shut down inefficient facilities." [224]

In his discussion with Subcommittee staff, Mr. West stressed that he had delegated his responsibilities in the energy conservation area to Mr. Richard Hite, his Deputy Assistant Secretary, and Mr. Ronald W. Piasecki, Director of the Office of Acquisition and Property Management.[225] In turn, both of these officials have also failed to provide strong leadership in support of energy conservation.

The failure of top-level DOI officials to support aggressive energy conservation measures has been particularly damaging because several major Department actions during 1981 implied that the new management team at Interior was "anti-conservation." For example, Departmental officials followed a laissez-faire approach with respect to the

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[219] Ibid., p. 304.
[220] Public Law 95–91 § 656 (1977) (current version at 42 U.S.C.A. § 7266 (1981)).
[221] Ibid.
[222] Hearings, supra note 2, pp. 294–97.
[223] Ibid., p. 296.
[224] Ibid., p. 297.
[225] Ibid., p. 294.

President's revocation of the Emergency Building Temperature Restrictions in February 1981, allowing the agency's bureaus to reinstate the more flexible temperature standards set forth in the Federal Property Management Regulations.[226] DOI officials sought to justify this "hands-off" management policy in a letter to the Subcommitee. They stated that:

> Recognizing the great diversity of needs within the varying activities in this Department, no single control policy was issued. The DOE Directive [which advised that the more flexible temperature restrictions should be applied] was simply provided to all Bureaus for their individual decision.[227]

In comparison, the Postal Service responded promptly following the President's Proclamation to assure that stringent building temperature restrictions would remain in effect. On February 25, 1981, the Postmaster General, William Bolger, issued a memorandum to all Regional Postmasters General stressing that:

> As you may know, the President has rescinded certain prior orders setting temperature restrictions for buildings. In doing so, the President stated that the fuel conservation objectives of the rescinded restrictions could be achieved through voluntary restraint and market incentives, without the regulatory cost of the prior mandatory restrictions.
>
> Market incentives make it vital that the Postal Service strive to save fuel where possible. Accordingly, I intend that we voluntarily restrain our consumption by maintaining the prior temperature standards for our buildings. Thus, the 65° F and 78° F restrictions for building heating and cooling, respectively, and the 105°F restriction for hot water used for personal hygiene and general cleaning, as specified in my memorandum of August 2, 1979, remain in effect, unchanged, for the Postal Service.[228]

DOI's top management also fostered the impression that it intended to de-emphasize energy conservation when it disapproved a proposal for a Department-wide energy conservation workshop in March 1981. According to an internal memorandum dated March 20, 1981, the Department's Energy Coordinators had "expressed a strong interest and need for the Department to conduct a Workshop," and the proposed workshop was intended to "present an opportunity for the Office of the Secretary to emphasize the concerns the Department has about energy conservation.[229] The disapproval of this workshop sent a strong negative signal to Department and bureau energy managers.

Budgetary decisions at DOI during 1981 also created concern that Department officials viewed in-house energy conservation as a low priority. For example, during Fiscal Year 1982 energy conservation

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[226] Ibid., p. 304.
[227] Ibid.
[228] Memorandum for Regional Postmasters General, District Managers, Sectional Center Managers, and Bulk Mail Center Managers from William F. Bolger, Postmaster General, February 25, 1981.
[229] Hearings, supra note 2, p. 311.

duties in many bureaus and regions were shifted from full-time to part-time responsibilities.[230] In addition, funds for energy conservation programs began to fall increasingly under the budget axe in late 1981 during preparation of the Fiscal Year 1983 budget.[231]

As a result, it is not surprising that the Director of DOI's Office of Acquisition and Property Management, Mr. Ronald W. Piasecki, commented in a memorandum to bureau heads on September 24, 1981 that "some officials are under the impression that the Department is de-emphasizing the Energy Conservation Program * * *."[232] While Mr. Piasecki sought to assure DOI's bureau heads in this memorandum that the Department was "in fact emphasizing and expanding the program wherever a favorable budget impact can be achieved," the effectiveness of the memorandum was severely limited because it was issued by the head of an office rather than a higher ranking official.

In fact, by late 1981, the Department's Energy Conservation Program was floundering like a rudderless ship. Although the Department's Energy Manager had sought diligently to breathe new life into a badly sagging program, he continuously met resistance from his superiors.

DOI's top-management did not even attempt to rehabilitate its Energy Conservation Program until January 1982, when Secretary Watt received a detailed letter from the Subcommittee concerning the implementation of the Department's Energy Conservation Program. In fact, in an interview with Subcommittee staff, Mr. Piasecki commented that "the Subcommittee had done us a favor with its letters" on energy conservation.[233] He stated that the Subcommittee's letters to Secretary Watt and OMB had raised the "visibility of the issue with OMB and our own budget people."[234] The impact of the Subcommittee's inquiry was underscored further in a March 19, 1982 memorandum from Mr. Pisasecki to bureau heads. In this memorandum, Mr. Piasecki stressed that:

> As you know, Congress has become concerned with the Department's response to legislation on Energy Conservation during the last two months. As a result of this concern, we have taken steps to ensure that the Department's Energy Program regains its position of leadership in response to legislation and the Department of Energy Regulations. To date, DOI is the only Government Agency to have an approved 10-Year Buildings Plan for Energy Conservation. While this is commendable and speaks well for the accomplishments of the Bureaus and Offices two years ago, there has been a tendency, because of budget restrictions I'm sure, to de-emphasize various programs.[235]

Following the Chairman's letter. Mr. Piasecki initiated two major actions in the energy program. First, he drafted a memorandum to Mr. Richard Hite, DOI's Deputy Assistant Secretary for Policy,

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[230] Ibid., p. 270.
[231] Ibid., p. 302.
[232] Ibid., p. 310.
[233] Ibid., p. 272.
[234] Ibid.
[235] Ibid., p. 313.

Budget, and Administration, setting forth his "recommendations concerning the future course of the DOI energy management program." [236] Second, Mr. Piasecki drafted a charter establishing a Departmental Energy Conservation Committee.[237] These proposals were approved by Mr. Hite on January 22, 1982 and February 25, 1982, respectively.[238]

The energy conservation initiatives proposed by Mr. Piasecki in early 1982 do contain some positive elements which Congress mandated and energy program officials have strongly advocated; for example, the proposal pledged to implement Section 549 of the National Energy Conservation Policy Act of 1978, which mandates that Federal agencies separately identify funds for energy conservation retrofit by line item.[239] Most Federal agencies, including the Interior Department, had failed to implement the requirement for line item budgeting in their budget submissions to Congress in Fiscal Years 1980, 1981, 1982, and 1983.

However, unfortunately, the energy conservation initiatives proposed by DOI in early 1982 fail to address the major problems threatening the Department's Energy Conservation Program and serve to create several new problems. The major problems threatening DOI's Energy Conservation Program are severe reductions in personnel and budgetary resources allocated to the program, the dismantlement of critical management control systems, and the absence of top-level commitment. Unless DOI's top-management resolves these central problems, the Department will fail to achieve the "annual multi-million dollars savings" [240] projected to accrue through aggressive implementation of its buildings and operations plans.

For example, although retrofit projects in the National Park Service (NPS) offer paybacks of less than two years,[241] DOI has proposed that funding for the NPS Servicewide Energy Conservation Program be slashed from $2.847.000 in Fiscal Year 1982 to zero in Fiscal Year 1983.[242] Although NPS Regional Directors will be authorized to fund energy retrofit projects under the Service's Park Restoration and Improvement Program,[243] funding for this program has not been increased to accommodate new energy projects.[244]

Moreover, as a result of the increased decentralization of the NPS energy program proposed by DOI, energy retrofit projects will be required to compete with other maintenance projects in the regions and parks.[245] Experience has demonstrated that energy projects take a "back seat" under this approach.[246] Private corporations, such as the J. C. Penney Corporation, have sought to overcome this problem by funding their energy retrofit investments "from a corporate appropriation which relieves the individual stores and facilities from the burden

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[236] Ibid., p. 287.
[237] Ibid., 279.
[238] Ibid., pp. 281–87.
[239] Ibid., p. 291.
[240] Ibid.
[241] U.S. Congress, House, Committee on Interior and Insular Affairs, Fiscal Year 1983 Budget Requests for the National Park Service. Hearings before the Subcommittee on Public Lands and National Parks, House of Representatives, 97th Cong., 2d Sess., 1982, p. 86 of uncorrected transcript (hereinafter cited as National Park Service Hearing).
[242] Hearings, supra note 2, p. 302.
[243] Ibid.
[244] U.S. Department of the Interior, Budget Justification for Fiscal Year 1983, February 1982, p. 55.
[245] National Park Service Hearing, supra note 243, p. 86.
[246] 656 Committee Meeting, supra note 72.

of a reduced cash flow." [247] Common sense suggests the Federal government should take a similar approach.

The lack of top-management attention to these critical budgetary matters was underscored at a meeting on March 3, 1982, nearly a month following the President's submission of his Fiscal Year 1983 budget to the Congress. At this meeting, DOI officials who had been delegated with responsibility for supervising the Department's Energy Conservation Program, including Messrs. Hite and Piasecki, conceded that they did not know the amount of funds provided for retrofit projects in Fiscal Year 1983 or even the amounts appropriated for such projects in Fiscal Years 1981 and 1982. Mr. Piasecki indicated that any estimate would be a "wild guess." [248]

The Subcommittee notes that Messrs. Hite and Piasecki have conceded that tens of millions of dollars in savings are available at DOI through the implementation of energy conservation investments.[249] In addition, these officials have stated that "the budget process is the proper tool for giving valid energy conservation projects the impetus they deserve." [250] However, line item budgeting alone will not assure the funding of cost-effective energy projects; a line item budget of zero will do nothing to further sound energy management. Rather, top-level DOI officials must devote their time and attention to energy conservation budgeting if they are truly serious about reducing wasted energy dollars.

DOI's recent energy conservation proposals also fail to assure the performance accountability which lies at the heart of successful energy conservation programs. Although DOI officials have conceded that the Department's Quarterly Energy Conservation Performance Report is DOI's "most valuable management tool in determining the effectiveness of various energy conservation measures," these same officials have admitted that recent DOI energy statistics are totally unreliable.[251] In March 1982, Mr. Paul Agin, Chief of DOI's Division of Property Management, commented that recent energy use statistics obtained from DOI's data processing unit "were so bad I couldn't use them." [252] He further emphasized that he is "not confident that DOI is compiling reliable statistics." [253] Moreover, both Messrs. Agin and Piasecki admitted that neither of them had compared DOI's energy conservation performance for Fiscal Year 1981 with that of Fiscal Year 1980.[254]

These serious gaps in DOI's current management control systems are underscored by comparing procedures instituted by the Postal Service and private corporations. For example, since Fiscal Year 1981, the Postal Service has tracked energy consumption in all facilities through a computerized information system. According to the Service's senior energy official, "energy consumption is continually compared to the same period last year as well as the same period in 1975." [255] Moreover,

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[247] J. C. Penney Letter, supra note 47.
[248] Hearings, supra note 2, p. 264.
[249] Ibid., p. 291.
[250] Ibid.
[251] Ibid., pp. 272, 310.
[252] Ibid., p. 272.
[253] Ibid.
[254] Ibid.
[255] In addition, "energy performance targets for specific groups of facilities—based on size, climate zone, and operational use—have been developed. These targets provide another means of evaluating energy consumption and the effects of energy retrofits." Energy Technology Conference, supra note 122, p. 3.

the Deputy Postmaster General and the Regional Postmasters General review the agency's energy consumption reports quarterly and the Special Assistant to the Deputy Postmaster General reviews this data monthly to monitor progress in achieving agency goals and to take necessary corrective action.[256]

Similarly, the energy manager of a major U.S. corporation has emphasized that reporting systems are essential elements in achieving energy cost reductions. He has stated that:

> Rapidly escalating energy prices create a strong motivation for improved energy efficiency. However, . . . in order to have effective management and control of energy conservation, all levels of management must have a system which will enable them to determine how much energy is being consumed, how much it costs, and how much is being saved. Reports are sent to our headquarters monthly and then are summarized for our division and corporate management every quarter. These summaries show the progress being made and where progress is not satisfactory.
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> Another important ingredient in our conservation program is the development of annual plans for energy conservation projects. Each plant develops a plan which covers the energy conservation projects it proposes to implement during the year. These include capital projects as well as operating and maintenance changes. The plans are summarized to show the expected energy conservation results and are submitted to the headquarters for approval. Once they are approved by division management, we have a useful tool against which results can be measured. Normally every division manager will * * * conduct a quarterly review with each of his plants. The energy conservation plan and progress against the plan is one of the subjects discussed during the review.
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> When good progress is made it is important that it be recognized and rewarded. We do this in two ways, both of which involve competition among the plant locations. We have a program called the best operating team, where progress in 14 important management functions is measured. They include energy conservation, overall cost control, plant safety, product quality and sales service just to name a few. Every plant is measured and judged on its progress in these elements. The plants that achieve the greatest progress each year are singled out and given special awards. Progress in these areas also has a bearing on the performance evaluation of the plant manager himself. Energy conservation along with the other elements is, therefore, an integral part of a manager's job. The second program is a special energy award program wherein the three plants that achieve the greatest energy conservation improvement in a single year are given special

[256] DiLisio Interview, supra note 118.

plaques in an award ceremony. These ceremonies are major events within the corporation and in the plants and communities. Officials from the U.S. Department of Energy as well as Members of Congress frequently participate in these events to help emphasize the importance of energy conservation.[257]

The Department's new energy management structure, developed in conjunction with its new Energy Conservation Committee, also threatens to jeopardize future DOI energy conservation achievements. Under this new structure, not a single individual in DOI Headquarters will be vested with substantive energy conservation responsibilities on a full-time basis. Rather, under the new structure, responsibility to develop energy conservation policies and goals and to monitor the progress of the bureaus will be vested in the Departmental Energy Committee, comprised of bureau energy managers, and the Chief of DOI's Division of Property Management.[258]

Under this new organizational structure, DOI has significantly reduced the direct management responsibilities for the Department's Energy Conservation Program within DOI Headquarters and has substantially downgraded the role of the Department's Energy Manager. In recent years, DOI's Energy Manager has devoted 100 percent of his or her time to the Department's Energy Conservation/Management Program and has exercised major substantive responsibilities with respect to this program. These responsibilities, outlined in the Department's Ten-Year Building Plan, have included the implementation of DOI energy policies and goals and liaison with DOE and bureaus to ensure compliance with Federal and Departmental regulations.[259] However, according to the Chief of DOI's Property Management Division, Mr. Paul Agin, the responsibilities performed by the Department's Energy Manager would be largely divided between himself and the Departmental Energy Committee under DOI's new organizational structure.[260]

The Subcommittee is concerned about the reorganization of DOI's conservation program for two reasons. First, we are concerned that the inclusion of the energy management program in a division, the Department's lowest organizational unit, will not afford the top-management support necessary for an effective energy conservation program. Second, the elimination of a full-time Energy Manager with substantive responsibilities at DOI Headquarters virtually assures that the Energy Conservation Program will receive a low priority.

Throughout the Subcommittee's investigation, we have found that energy conservation programs are usually de-emphasized when energy management is assigned as a part-time duty. Even Mr. Agin himself admitted that his efforts would be concentrated on non-energy tasks during the spring of 1982.[261] In an interview with Subcommittee staff on March 3, 1982, Mr. Agin stressed that his attention during the fol-

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[257] Hearings, supra note 2, pp. 16–18.
[258] Ibid., pp. 267–70, 279–81.
[259] U.S. Department of the Interior, Office of Acquisition and Property Management, Ten-Year Buildings Plan for Energy Conservation, 1980, p. 6.
[260] Hearings, supra note 2, pp. 267–70.
[261] Ibid., p. 270.

lowing two months would be concentrated on implementing the real property initiatives set forth in the President's budget.[262] Under this initiative, Mr. Agin, as Chief of DOI's Property Management Division, will be responsible for overseeing the review of over 500 million acres of land for potential disposition.[263] Moreover, bureau energy managers, whose time is already being squeezed by personnel cuts in their own bureaus, will be assigned new responsibilities without the resources or authority necessary to assure that their recommendations will be implemented.

VI. Recommendations

A. The President should:

1. Issue a directive to the heads of all Federal agencies mandating aggressive action to reduce wasted energy dollars in the Federal government.

2. Support the establishment of a high-level office in the executive branch to develop annual energy conservation goals, monitor and evaluate agency energy conservation performance, analyze Federal energy cost trends and projections, provide technical assistance to energy-using agencies, and facilitate the exchange of energy information between such agencies.

B. The Office of Management and Budget should:

1. Assure that Federal agencies are held accountable for their energy consumption, energy costs, and energy savings.

2. Review and evaluate funds for energy conservation measures in agency budgets.

3. Require agencies to identify funds for energy conservation measures as a separate line item and provide this information in budget submissions to the Congress.

4. Establish investment guidelines to assure that funds for energy conservation measures are allocated to the most cost-effective projects among the various agencies.

5. Organize an energy conservation conference, including representatives from the Interagency Federal Energy Policy Committee, top-level officials from the Office of Management and Budget and the Department of Energy, and energy managers from private corporations.

C. Each major Federal energy-using agency should:

1. Provide a full-time energy conservation official at a high organizational level.

2. Improve the accuracy of its energy usage reporting systems.

3. Include energy conservation criteria in the performance ratings of its supervisory personnel.

4. Assure coordination between energy and budget officials.

5. Undertake a thorough review of remaining opportunities for low-cost no-cost conservation measures and implement promptly those measures that are identified. Agencies should establish technical advisory teams to assist in the identification and implementation of these measures.

6. Initiate validation studies to compare actual energy savings resulting from conservation retrofit measures with predicted energy savings in various building types.

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[262] Ibid.
[263] Ibid.

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SEPARATE VIEWS

This report makes some useful and productive contributions and recommendations designed to encourage the reduction of needless Federal expenditures for energy consumption. We deplore, as much as any group, such wastefulness. Nor do we believe that the Federal Government is doing all that it can to promote energy conservation or to achieve more savings through carefully-considered and thoughtful energy conservation programs and policies.

We do, however, take issue with the Report's clear inference that the Administration has no interest in saving energy dollars through energy conservation. There can be little dispute that the efforts of the Administration in the area of conservation stem from a different, and to this point, successful departure from the traditional views on encouraging energy conservation.

The energy supply and price scenario in 1982 is significantly different and more hopeful than the situation faced by the country at any time in the last eight years. The regulatory apparatus that subsidized foreign oil price increases and discouraged domestic production and efficiency initiatives has been dismantled. Oil imports have declined precipitously (from 8 million barrels per day in January 1980 to 3.6 million barrels per day in March 1982). The cost of petroleum in real terms has also declined since January 1981. The nation has also enjoyed the benefit of increased domestic crude oil production and heightened public recognition of the values of energy conservation based upon the true cost of such energy.

We believe that the Executive Branch should continue to pursue all avenues to reduce Federal waste and inefficiency. Because of constraints on available resources for agency programs, ample incentives should and do exist for agencies to undertake and foster efforts to achieve energy conservation.

We will continue to monitor those efforts to ascertain and ensure that energy consumption in the Federal Government is minimized by prudent management practices and vigorous agency conservation efforts.

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